Special Report (2)

Public Inquiry Into The Disappearance Of Amri Che Mat

by

Human Rights Commission Of Malaysia (SUHAKAM)

Kuala Lumpur, 3 April 2019

The Panel:

Dato' Mah Weng Kwai, Prof. Dato' Dr Aishah Bidin & Dr Nik Salida Suhaila Nik Saleh

Counsel/Officer appearing before the Panel:

For the family of Amri Che Mat - M David Morais, Khabir Dillon, Raul Lee Bhaskaran & Larissa Ann Louis

For SUHAKAM - Simon Karunagaram, Joshua Ericsson, Nur Adlin Abd Ghaffar & Yustina Ishak

For the Bar Council - Roger Chan Weng Keng, Mansoor Saat & Cyrus Tiu Foo Woei

For the police - SAC Dato' Moktar, SAC Dato' Azman, DSP Nuzulan, ASP Irwan & ASP Ismail

Introduction

[1] This is the Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia) ("SUHAKAM") Panel's final decision in the Public Inquiry into the disappearance of Amri Che Mat.

Disappearances Of Joshua HiImi, Ruth Hilmi, Amri Che Mat And Pastor Raymond Koh

[2] Since November 2016, Peter Pormannan a/l Annamalai ("Peter") had made various attempts to contact his friends Joshua Hilmi (who was also known as Hilmi bin Hanim) and his wife, Ruth Hilmi. Their last known address was at Kampung Tunku, Petaling Jaya. On 6 March 2017, Peter lodged a police report at the Klang District Police Headquarters stating that despite various attempts to locate Joshua Hilmi and Ruth HiImi, the couple was uncontactable. Both Joshua Hilmi and Ruth Hilmi have not been seen, heard of, or heard from, since November 2016 until now, and are believed to have "disappeared".

[3] On 24 November 2016 at about 10.30pm. Amri Che Mat was last seen by his wife Norhayati Mohd Ariffin (IW1) ("Norhayati"). Their daughter Nur Masarrah saw him leaving their house in his car at about 11.30pm. Later that night, his car was found abandoned with the windows smashed at a disused construction site at Bukit Chabang, Kangar, Perlis. Amri Che Mat has not been seen, heard of, or heard from, since then until now, and is believed to have "disappeared".

[4] Less than three months later, on 13 February 2017, Pastor Raymond Koh was last seen by his wife Susanna Liew Sow Yoke ("Susanna") at about 10.15am. Subsequently, one Roeshan Celestine Gomez ("Roeshan") lodged a police report stating that at about 10.45am, he saw a car being "boxed in" by three black four-wheel drive vehicles ("4WDs") while he was driving along Jalan SS4B/10, Kelana Jaya, Selangor. The driver was seen being dragged out of his car and put into one of the three 4WDs. This incident was captured on closed-circuit television ("CCTV") of two nearby houses. Pastor Raymond Koh has not been seen, heard of, or heard from, since then and is believed to have "disappeared".

[5] These three cases of disappearance of persons attracted a significant amount of public attention and concern. It has also led the public to perceive that these disappearances of persons may have been the acts of the State and/or that the State may either have been complicit, involved, supportive of or concealing these unprecedented disappearances.

Memorandum Submitted To SUHAKAM

[6] In furtherance of the protection and promotion of human rights in Malaysia, SUHAKAM was established under the Human Rights Commission of Malaysia Act 1999 ("the Act").

[7] SUHAKAM's functions are set out in s. 4 of the Act, in particular, s. 4(1)(d) which provides that one of the functions of SUHAKAM "shall be to inquire into complaints regarding infringements of human rights."

[8] Further, s. 12 of the Act empowers SUHAKAM to act on its own motion to inquire into allegations of infringement of human rights or to act on complaints submitted to SUHAKAM.

[9] Due to the serious concerns surrounding the three cases of disappearances, on 20 April 2017, a coalition of civil society groups led by Suara Rakyat Malaysia (SUARAM) submitted a Memorandum to SUHAKAM on behalf of the families of the several persons that were reportedly missing: Joshua Hilmi and his wife, Ruth Hilmi, social activist Amri Che Mat and Pastor Raymond Koh ("Missing Persons"). SUHAKAM was called on to assist the families concerned, to investigate and determine the whereabouts of these Missing Persons and to serve as a channel of communication between the families, the Police and the Government of Malaysia.

[10] On 21 April 2017, the Chairman of SUHAKAM, Tan Sri Razali Ismail ("SUHAKAM Chairman") issued a press statement[1] calling on the authorities to use all means at their disposal to discover the fate of these Missing Persons, to take all necessary steps to alleviate the concerns and unease among the public in this regard and to bring to justice those responsible for the disappearances.

[11] Up to June 2017, the disappearances of Joshua Hilmi, Ruth Hilmi, Amri Che Mat and Pastor Raymond Koh remained unresolved. It must be highlighted that to date the families of the Missing Persons have not received any demand for ransom for their release nor has anyone or party claimed responsibility for the disappearance of the Missing Persons.

[12] On 16 June 2017, SUHAKAM released a press statement[2] stating that SUHAKAM will investigate the disappearances of the Missing Persons in accordance with its statutory mandate and powers. SUHAKAM further stated that it would assist the authorities with their ongoing investigations and called on individuals who may have relevant and important information to come forward in order to have their statements recorded by SUHAKAM.

[13] Notwithstanding the above, SUHAKAM reiterated its calls on the authorities to fully and expeditiously investigate all the disappearances, especially where there are suspicions in the minds of the public that the disappearances may be *enforced* disappearances.

Panel For The Public Inquiry And Terms Of Reference

[14] On 9 August 2017, Chairman of SUHAKAM released a press statement to announce that SUHAKAM will be conducting a Public Inquiry into the disappearances of Joshua Hilmi and Ruth Hilmi, social activist Amri Che Mat and Pastor Raymond Koh.[3] In its statement, SUHAKAM announced that the Public Inquiry, scheduled to commence in October 2017, would consider, among others:

14.1 Whether these cases are cases of enforced or involuntary disappearances, as defined under the International Convention for the Protection of All Persons from Enforced Disappearance ("ICPPED") that defines an enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State; and

14.2 Whether the authorities, specifically the police have taken adequate steps to investigate these cases.

[15] On 5 October 2017, pursuant to SUHAKAM's press statement on 9 August 2017, a panel for the Public Inquiry was formed to investigate the disappearances. The panel comprised three SUHAKAM Commissioners namely, Dato' Mah Weng Kwai (Chairman), Prof Dato' Dr. Aishah Bidin and Dr Nik Salida Suhaila binti Nik Saleh ("Panel").

[16] The Terms of Reference[4] of the Public Inquiry ("Terms of Reference") are as follows:

(a) To determine whether these are cases of enforced disappearances as defined under the International Convention for Protection of all Persons from Enforced Disappearances or are cases of involuntary disappearances in breach or breaches of the criminal and/or civil law and/or applicable human rights laws (hereinafter referred to as such alleged breach or breaches);

(b) If (a) has been established at the inquiry:

(i) How such alleged breach or breaches came about;

(ii) To identify person(s) or agency(ies) responsible for such alleged breach or breaches;

(iii) What administrative directives or procedures, or arrangements contributed to such alleged breach or breaches.

(c) To consider whether the authorities, specifically the Royal Malaysian Police have taken adequate steps to investigate such alleged breach or breaches.

(d) To recommend measures or guidelines to be taken to ensure that such alleged breach or breaches do not recur.

Public Inquiry Into The Disappearance Of Amri Che Mat

[17] The Panel began with the hearing of the Public Inquiry into the Disappearance of Pastor Raymond Koh on 19 October 2017. However, on 16 January 2018, the Panel decided to temporarily cease the Public Inquiry into the disappearance of Pastor Raymond Koh in deference to a letter dated 15 January 2018 received from the Police informing the Panel that a suspect has been charged in court.[5]

[18] Since the Public Inquiry into the disappearance of Pastor Raymond ceased temporarily, the Panel decided to commence with the hearing of the Public Inquiry into the disappearance of Amri Che Mat on 22 January 2018.

[19] On 15 November 2018, the Panel completed the Public Inquiry into the disappearance of Amri Che Mat. The hearings of the Public Inquiry took approximately ten months from the end of January 2018 to the beginning of November 2018 after a total of twenty-seven days and hearing a total of twenty-four witnesses.[6]

[20] The Public Inquiry into the Disappearance of Joshua Hilmi and his wife Ruth Hilmi have not commenced, to date.

[21] Separate decisions of the Public Inquiry into the disappearances of Amri Che Mat and Pastor Raymond Koh will be delivered accordingly.

A **Issues To Be Determined By The Panel**

[22] The main issues that have to be determined by the Panel can be summarised as follows:

22.1 Whether the disappearance of Amri Che Mat is a case of voluntary disappearance;

B

22.2 Whether the case of Amri Che Mat is a case of enforced disappearance as defined under ICPPED that is, by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State; and

C 22.3. Whether there was a refusal to acknowledge the disappearance of or concealment of the fate or whereabouts of Amri Che Mat by the State.

Position Of The Parties

Position Of Counsel On Behalf Of The Family

D **[23]** It is the position of Counsel on behalf of the family of Amri Che Mat that Amri Che Mat was abducted and that there is reasonable suspicion that Amri Che Mat's "abduction" was carried out by State Agents.[7]

[24] Counsel on behalf of the family of Amri Che Mat further submitted that if the evidence is insufficient to hold that the State Agents themselves E carried out the "abduction" of Amri Che Mat, alternatively, there is reasonable suspicion that Amri Che Mat's "abduction" was carried out by persons or groups of persons with the authorisation, support or acquiescence of the State.[8]

Position Of Assisting Officers Of SUHAKAM

F

[25] It is the position of the Assisting Officers of SUHAKAM that on a balance of probabilities, it can be concluded that Amri Che Mat was a victim of enforced disappearance that occurred on 24 November 2016, conducted by a group of highly trained personnel and that governmental agencies such G as the Royal Malaysian Police ("the police"), especially individuals within the Special Branch, had directly or indirectly been involved in the enforced disappearance of Amri Che Mat.[9]

Position Of The Malaysian Bar Council

[26] Counsel of the Malaysian Bar Council ("Bar Council") have submitted H that based on their analysis of the evidence by the witnesses, there was an enforced disappearance of Amri Che Mat.[10]

Position Of The Officers Appearing For The Police

[27] The Officers Appearing for the Police agree with counsel on behalf of I the family of Amri Che Mat, Assisting Officers of SUHAKAM and counsel of the Bar Council that Amri Che Mat is missing and that Amri Che Mat's whereabouts is unknown till now, however, it is their position that there is no evidence to show that the police were involved in the disappearance of Amri Che Mat.[11]

[28] It is the position of the Officers Appearing for the police that they have acted in accordance within their functions provided under s. 3(3) of the Police Act and that all accusations against the police relating to the conduct of the investigations, non-compliance with standard operating procedures and the involvement of any individuals related to the police in the disappearance of Amri Che Mat are unjustified and *mala fide*.[12]

[29] The police have assured the Panel and counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and counsel of the Bar Council that police investigations into the disappearance of Amri Che Mat are still ongoing and that immediate action will be taken if there are new developments arising.[13]

Decision Of The Panel

[30] Upon a detailed evaluation of the evidence adduced, having read and considered the written submissions of counsel on behalf of the family, Assisting Officers of SUHAKAM, counsel of the Bar Council and Officers Appearing for the Police ("the Parties") and upon hearing the oral submissions of the Parties on 6 March 2019, the Panel has arrived at a final decision.

[31] After having held lengthy discussions and deliberations in this case, the Panel is of the unanimous view that Amri Che Mat is a victim of an enforced disappearance as defined in art. 2 of ICPPED that took place on 24 November 2016 at about 11.30pm.

[32] The direct and circumstantial evidence in Amri Che Mat's case proves, on a balance of probabilities, that he was abducted by State agents namely, the Special Branch, Bukit Aman, Kuala Lumpur.[14]

[33] The Panel further finds that there is no evidence to support the contention, as suggested by counsel on behalf of the family of Amri Che Mat, that Amri Che Mat was abducted by persons or groups of persons acting with the authorization, support or acquiescence of the State.

Grounds Of Decision

The Law

Applicable Human Rights Principles

[34] Human rights are protected under various instruments, both domestically and internationally. International human rights treaties and the Declarations of the General Assembly of the United Nations categorise enforced disappearance as an infringement of human rights.

Right Against Enforced Disappearance Under International Law

[35] "Enforced disappearance" is defined in art. 2 of ICPPED as follows:

> For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

[36] Although Malaysia is not a signatory to ICPPED, the Panel referred to and considered the definition of 'enforced disappearance' as set out in ICPPED as a guide when addressing the issue of whether the disappearance of Amri Che Mat fell within the definition of enforced disappearance in breach or breaches of human rights.

[37] The definition of "enforced disappearance" can be separated into two limbs. The first limb involves the direct participation of the State in the disappearance by forcefully taking the victim away. The second limb speaks of the indirect participation of the State by giving its authorization, support or acquiescence to the persons or groups of persons who have forcefully taken the victim away. Both limbs of the definition emphasise the involvement and participation of the State in the disappearance.

[38] Article 2 of ICPPED also states that when a State is involved in the deprivation of liberty, it must be followed by a refusal of the State to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person.

[39] The right against enforced disappearance is also protected in the Universal Declaration of Human Rights 1948 ("UDHR") as follows:

> Article 3 Everyone has the right to life, liberty and security of the person ...
>
> Article 6 Everyone has the right to recognition everywhere as a person before the law ...
>
> Article 9 No one shall be subjected to arbitrary arrest, detention or exile.

[40] By virtue of s. 4(4) of the Act, the Panel shall give regard to the UDHR to the extent that it is not inconsistent with the Federal Constitution.

Right Against Enforced Disappearance Under Malaysian Law

[41] In Malaysia, the right to liberty is enshrined in art. 5 of the Federal Constitution of Malaysia ("FC") which states:

Liberty of the person

5(1) No person shall be deprived of his life or personal liberty save in accordance with law.

[42] On the issue of the right against enforced disappearance, a distinction must be drawn between 'enforced disappearance', 'kidnapping', 'abduction' and 'missing person' by referring to, among others, s. 3 of the Kidnapping Act 1961 and s. 362 of the Penal Code of Malaysia.[15]

42.1 Section 3 of the Kidnapping Act 1961 provides that a case will be one of kidnapping where a ransom is demanded:

Abduction, wrongful restraint or wrongful confinement for ransom

3(1) Whoever, with intent to hold any person for ransom, abducts or wrongfully confines or wrongfully restrains such person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to whipping.

42.2 Whereas, s. 362 of the Penal Code of Malaysia provides that:

Abduction

362. Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct that person.

42.3 There is no express definition of a 'missing person' but generally speaking, when someone has not been seen, heard of, or heard from for a period of time without any news of his/her whereabouts or whether he/she is still alive, he/she is said to be a missing person. Cases where there appears to be no criminal elements involved are usually categorised as missing persons.

[43] It is essential that the State conduct investigations promptly and provide evidence and explanations to the family of the disappeared person. This duty is embedded in the right of the family to know the truth regarding what has happened to their loved one. The right extends to the members of the family insofar as it is a violation of mental and moral integrity of the next of kin which is a direct consequence of the enforced disappearance. This was highlighted in the case of *Bamaca-Velarquer v. Guatemala*[16] where the Inter-American Court of Human Rights held:

197. In this respect, the Commission declared that the right to the truth has a collective nature, which includes the right of society to "have access to essential information for the development of democratic systems", and a particular nature, as the right of the victims' next of kin to know what happened to their loved ones, which permits a form of reparation. The Inter-American Court has established the obligation of the State to investigate the facts while there is uncertainty about the fate of the person who has disappeared, and the need to provide a simple and prompt recourse in the case, with due guarantees.

Public Inquiry

What Is A Public Inquiry?

[44] Generally, a public inquiry is an official review of events or actions ordered by a government body. A public inquiry accepts evidence and conducts its open hearings in a more public forum and focuses on a more specific occurrence.

[45] Interested members of the public and organisations may not only submit written submissions as is the case with most inquiries, but may also be present to listen to the oral evidence given by the witnesses during the hearing.[17]

[46] A public inquiry is a mechanism that can be used to achieve SUHAKAM's mandate to look into systemic human rights issues with a view to solving them through systematic means. By adopting a broad-based human rights approach, it can examine a large number of situations as opposed to an individual complaint. A public inquiry has a dual focus, fulfilling both fact finding and educational roles. An effective public inquiry is one that is supported by the exercise of powers to subpoena witnesses, to order the production of documents at its hearings, and to produce a report that will be made public containing recommendations to all relevant parties.[18]

Powers Of Inquiry Of SUHAKAM

[47] As mentioned above, SUHAKAM's authority to conduct an inquiry is stipulated in s. 12 of the SUHAKAM Act which reads:

> **Commission may inquire on its own motion or on complaint**
>
> 12(1) *The Commission may,* on its own motion or *on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into an allegation of the infringement of the human rights of such person or group of persons.*
>
> (2) The Commission shall not inquire into any complaint relating to any allegation of the infringement of human rights which:
>
> (a) is the subject matter of any proceedings pending in any court, including any appeals; or
>
> (b) has been finally determined by any court.
>
> (3) If the Commission inquires into an allegation under subsection 12(1) and during the pendency of such inquiry the allegation becomes the subject matter of any proceedings in any court, the Commission shall immediately cease to do the inquiry.

[48] The powers relating to the conduct of public inquiries are found in s. 14 of the Act:

> **Powers relating to inquiries**
>
> 14(1) The Commission shall, for the purposes of an inquiry under this Act, have the power:

(a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine;

(b) to require that the evidence, whether written or oral, of any witness be given on oath or affirmation, such oath or affirmation being that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorised in that behalf by the Commission an oath or affirmation to every such witness;

(c) to summon any person residing in Malaysia to attend any meeting of the Commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;

(d) to admit notwithstanding any of the provisions of the Evidence Act 1950 [Act 56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings; and

(e) to admit or exclude the public from such inquiry or any part thereof. Conduct of the Inquiry.[19]

[49] Prior to the hearings at the Public Inquiry, officers of SUHAKAM recorded statements of individuals who came forward to assist SUHAKAM with information relating to the disappearance of Amri Che Mat. The officers also carried out investigations seeking to interview possible witnesses.

[50] At the hearings of the Public Inquiry, witnesses who had their statements recorded by the officers of SUHAKAM prior to the Public Inquiry, were shown their statements. The witnesses were requested to read the statements and to confirm the contents contained therein. The statements were then marked as exhibits. Each witness was then examined by counsel representing the parties, including Officers Appearing for the police. Witnesses who did not give their statements prior to the Public Inquiry were similarly examined by counsel representing the parties, including the Officers Appearing for the police. In the course of the hearings, various video recordings, photographs and documents were tendered as evidence and marked as exhibits. All witnesses gave their evidence on affirmation.

[51] At the conclusion of the Public Inquiry, the Panel directed counsel representing the family, Assisting Officers of SUHAKAM, counsel of the Bar Council and Officers Appearing for the Police to submit their written submissions pertaining to all issues arising from the Panel's Terms of Reference for the consideration of the Panel.

Elements To Be Proven At The Public Inquiry

[52] The definition of enforced disappearance in ICPPED contains various degrees of culpability on the part of the State regarding the initial disappearance. The degrees of culpability of the State are listed below in descending order:

52.1. That the victim was arrested or detained by agents of the State;

52.2. That the victim was abducted by agents of the State;

52.3. That the victim was abducted by persons or groups of persons acting with the authorisation of the State;

52.4. That the victim was abducted by persons or groups of persons acting with the support of the State; or

52.5. That the victim was abducted by persons or groups of persons acting with the acquiescence of the State.

[53] In the case of Amri Che Mat, the first degree of culpability is not relevant. There is no evidence to indicate that Amri Che Mat was arrested or detained by State agents in the exercise of their lawful powers. The evidence is that he was taken away or "disappeared". As such, the degrees of the State's culpability that are relevant in the case of Amri Che Mat, are the second to fifth degrees of culpability.

[54] Therefore, the Panel is required to determine whether the evidence, direct and/or circumstantial, proves on a balance of probabilities that he was either abducted by State agents or abducted by non-State agents with the authorisation, support or acquiescence of the State.

[55] Further, the Panel is required to determine whether the evidence, direct and/or circumstantial, proves on a balance of probabilities, that after the disappearance of Amri Che Mat had occurred, the State has refused to acknowledge the deprivation of liberty of the person or has concealed the fate or whereabouts of the disappeared person as provided under art. 2 of ICPPED mentioned above.[20]

[56] In a case of an enforced disappearance, there is an indivisible connection between the initial disappearance and the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person. This is stated by the European Court of Human Rights in the case of *Varnava & Ors v. Turkey*[21]:

> 148. A disappearance is a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred. This situation is very often drawn out over time, prolonging the torment of the victim's relatives. It cannot therefore be said that a disappearance is, simply, an "instantaneous" act or event; the additional distinctive element of subsequent failure to account for the whereabouts and fate of the missing person gives rise to a continuing situation.

[57] In the case of *Ng Yee Fong & Anor v. EW Talalla* [1986] 1 MLJ 25, Mohamad Azmi SO defined the word "acquiescence" as follows:

> ... properly used where a person having a right, and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to it being committed; a person so standing by cannot afterwards be heard to complain of the act (see *De Bussche v. Alt* (1878) 8 Ch ID 286 314). In that sense the doctrine of acquiescence may be defined as acquiescence under such circumstances that assent may be reasonably inferred from it.

[58] The family and other persons acting on behalf of the family of Amri Che Mat do not have the investigative powers of the State to secure evidence on the identity of the person or persons who caused the disappearance in order to prove with precision the culpability of the State.

[59] At the conclusion of the Inquiry, if the Panel's finding is that this case is one of an enforced disappearance, the Panel is empowered under s. 13(2) of the Act to refer it to the relevant authorities or persons with the necessary recommendations.

[60] On the other hand, in the event that the Panel's finding is that the disappearance is an involuntary disappearance in which the State is not concerned, the Panel similarly has powers under s. 13(2) of the Act to refer the case to relevant authorities or persons with the necessary recommendations.

Standard Of Proof In A Public Inquiry

[61] There is no provision in the Act which sets out the standard of proof that is to be applied in a public inquiry. Nevertheless, this does not mean that there is no standard of proof that the Public Inquiry is required to meet.

[62] A public inquiry is an investigative inquiry similar to an inquest (that is an inquiry into a death by a coroner). Although a public inquiry is not an inquest or a civil or criminal trial, the Panel is of the view that the standard of proof to be applied in a public inquiry is of the same standard of proof applicable to an inquest, that is, on a balance of probabilities and not beyond reasonable doubt.

[63] While an inquest is for the purposes of determining whether any person may be criminally concerned in the cause of death and to arrive at a verdict, a public inquiry into the enforced disappearance of a person is for the purpose of determining whether the State is in any way concerned in the involuntary disappearance of that person.

[64] The relevant principles on the standard of proof in an inquest were discussed in detail by the Court of Appeal in the case of *Teoh Meng Kee v. PP* [2014] 5 MLJ 741, where at p. 759 (MLJ), it was held by Mohammad Ariff JCA as follows:

A [48] The learned magistrate, and to a lesser extent, the High Court judge, cited and repeated the *basic principles and rules on coronial jurisdiction ... The commonly accepted principles are as follows:*

(a) an inquest is a fact finding exercise and not a method of apportioning guilt;

(b) in an inquest, there is no indictment, no prosecution, no defence and no trial. It
B *is simply an attempt to establish facts;*

(c) it is an inquisitorial and an investigation process, unlike a trial;

(d) a coroners verdict is not determined by probabilities but by established facts. A coroner is bound by evidence and can only find facts proved by evidence, not
C *guesswork;*

(e) if the evidence is insufficient to come to a definite finding, the coroner should record an open verdict;

(f) the function of a magistrate holding an inquiry under Chapter XXXII of the CPC is to inquire, when, where, how and after what manner the
D deceased came by his death and also whether any person is criminally concerned in the cause of death (s 337). The cause of death is defined under s 328 to include not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and
E as to whether his death resulted in any way from, or was accelerated by any unlawful act or omission on the part of any person. Hence, *the magistrate holds an inquiry by examining witnesses on oath and while usually following the ordinary rules of evidence, he may admit any evidence which he thinks fit, especially hearsay evidence;*

F *(g) the verdict of the magistrate is only an expression of a non-binding opinion of a proceeding where there is no accusation against any party;*

(h) it follows that a coroners inquest is merely a court of law, not a court of justice. Its verdict does not amount to any conviction.

(i) many of these principles are outlined in our Practice Directions No 1
G of 2007: Guidelines on Inquest (as restated in Practice Direction No 2 of 2014 Arahan Amalan Bil 2 Tahun 2014: Pengendalian Siasatan Kematian (Death Inquiry) Selaras Dengan Penubuhan Mahkamah Khas Koroner) To quote some of the parts immediately relevant to this appeal:

1. What is an Inquest?

H *(a) It is not a trial.*

(b) There are no parties to prosecute and to defend.

(c) It is only an inquiry by a magistrate as to the cause of death and the Prosecuting Officer is there not to prosecute anyone but only to assist the court with the examination of witnesses for the purpose of giving evidence ...

I

(f) A magistrate Coroner shall not express any opinion on any matter until the conclusion of the inquest.

(g) There is no conviction or punishment at the end of it.

[70] ... the scheme and structure of the interlocking provisions under Chapter XXXII of the CPC mandate a lower standard. I am therefore of the view that *the applicable standard should be the civil standard of proof on a balance of probabilities.*

[65] In the case of *Teoh Meng Kee* above, at p. 774, it was held by Mah Weng Kwai JCA as follows:

[108] It will be noted that s. 328 of the CPC speaks of opinion. The *section does not stipulate what the standard of proof is that has to be applied in an inquiry of death. Although* s. 328 of the CPC is *silent on the standard of proof, of course, it cannot be said that there is no standard to be applied.* That would be an unacceptable position in law. *I am of the view that all that is required of the magistrate is to arrive at an opinion applying the balance of probabilities (civil) standard test on an objective basis.* There must be sufficient evidence to arrive at an opinion, in particular whether the death resulted in any way from or was accelerated by any unlawful act or omission on the part of any other person.

Standard Of Proof In An Inquiry Of Death

[118] The next question of law of utmost importance to be determined in this case is the *standard of proof to be applied in an inquiry of death.* Both the learned magistrate and the learned High Court judge adopted the beyond reasonable doubt test. With respect, I am of the view that this is an error of law *as the correct test to be applied is the civil standard of balance of probabilities.* I say this for the following reasons:

(a) as stated earlier, *an inquiry of death is not a criminal trial or proceeding. There is no accused person on trial and there is no one to be convicted and sentenced by the court* upon a finding that the prosecution has proved its case beyond reasonable doubt;

(b) *the rules on admissibility of evidence and procedure in an inquiry of death are not as strict as in a criminal trial. The magistrate is on a mere fact finding mission and is allowed to consider even hearsay evidence.* In the case of *Re Loh Kah Kheng (deceased)* [1990] 2 MLJ 126 it was held that a *coroner is not bound by the normal procedure of courts and rules of evidence*;

(c) where the *rules relating to evidence and procedure are lax, it will be inconsistent to require a magistrate to return a verdict at the close of an inquiry on a beyond reasonable doubt standard*;

(d) it will be incorrect to require the family of Teoh Beng Hock to have to prove a case beyond reasonable doubt before the learned magistrate can return a verdict of homicide as the means to do so are severely limited. The family of Teoh Beng Hock, being *members of the public, simply do not have the powers of investigation as possessed by the police. And where the threshold for proof in an inquiry of death is lower, it will not be correct nor necessary to expect members of the public to produce evidence on a beyond reasonable doubt standard* and yet expect a verdict to be proved beyond reasonable doubt;

(e) a magistrate conducting an inquiry of death is merely to ascertain whether anyone is criminally concerned in the cause of death. He has no power to hold or find anyone criminally liable in the cause of death on a beyond reasonable doubt standard;

(f) in the event a person or persons is/are arrested for being criminally liable in the cause of death it is then for the prosecution to charge the person/s for an offence of homicide and where it will be incumbent upon the prosecution to prove a case beyond reasonable doubt before a conviction can be secured;

(g) for the police to effect an arrest of a suspect, all that the police have to show at that stage of investigations is that there is reasonable ground of suspicion to support the arrest. The police most certainly do not have to have reasonable grounds on a beyond reasonable doubt standard, before effecting the arrest. Now, *if the police can effect an arrest based on reasonable suspicion (see Shaaban & Ors v. Chong Fook Kam & Anor [1969] 2 MLJ 219) why then should the bar or threshold be raised in an inquiry of death to a standard beyond reasonable doubt before the learned magistrate can return a verdict of homicide? I see no basis for this approach* as after all, in fact and in reality, *the recording of evidence in an inquiry by the learned magistrate can be likened to an extension of investigations by the police.* In *Shaaban*'s case it was held that the police are entitled to make an arrest if a reasonable suspicion existed that the suspect was concerned with the offence. It is unnecessary for the police to show that there was *prima facie* proof of such offence before an arrest.

[119] *It is not in dispute that in an inquest the evidence adduced must be credible* so as to become the basis for the coroners finding (see *Inquest into the death of Sujatha Krishnan, deceased* [2009] 5 CLJ 783); that the verdict must not be based on guesswork but on particulars which have been proved in evidence (see *R v. Huntback; exparte Lockley* [1944] KB 606, *Re Derek Selby, deceased* [1971] 2 MLJ 277); a magistrate who conducts an inquiry must confine himself to the evidence made available to him and at the end of the day must decide on that evidence alone (see *Public Prosecutor v. Shanmugam & Ors* [2002] 6 MLJ 562); that a magistrate can only make a definite finding based on proved facts produced and not on mere conjectures (see *Re Rumie Mahlie, deceased* [2007] MLJU 280; [2007] 10 CLJ 69).

[120] In Victoria, Australia in the case of *Anderson v. Blashki* [1993] VR 89 it was held that the standard of proof to be applied by the coroner in investigating a death is the civil standard of the balance of probabilities (see also *Briginshaw v. Briginshaw* (1938) 60 CLR 336). In the infamous case of *Inquest into the death of Azaria Chantel Loren Chamberlain* [2012] NTMC 020, it was held by the High Court of Australia that in the coronial jurisdiction, the test applied is a balance of probabilities test.

[122] Returning to the issue of the standard of proof applicable in an inquiry of death, a useful comparison may be made with the standard applied in preliminary inquiries into cases (namely, capital offences) triable by the High Court before Chapter XVII, ss. 138 and 151 of the CPC were deleted by Act A908. For purposes of committal of a case for trial in the High Court, reliance used to be placed by the prosecution on the phrase sufficient grounds for committing as provided for by the former s. 140(i) of the CPC. What this meant was that there must be credible evidence shown by the prosecution for a case to be committed for trial. The *standard of proof in a preliminary inquiry had always been on a standard lower than that*

of beyond reasonable doubt. In *Public Prosecutor v. Puspanathan a/l Sinnasamy & Ors* [1996] 4 MLJ 165, Mohd Hishamudin J (now ICA) had occasion to say that for the purposes of the preliminary inquiry, the prosecution was only required to adduce sufficient evidence identifying the body of the deceased, and was not required to prove this beyond reasonable doubt. In a criminal trial, as opposed to a mere preliminary inquiry, the standard of proof is higher (see p 169 E, F, H, I; *Teay Wah Cheong v. Public Prosecutor* [1964] 1 MLJ 21 and *Fazal Din v. Public Prosecutor* [1949] MLJ 123 distinguished).

[66] Thus, the standard of proof applicable in a Public Inquiry under s. 12 of the Act is on a balance of probabilities (that is the standard or quantum of proof in a civil case). In essence, this means that the Panel is entitled to accept and rely on evidence which is probably true and which does not need to be proved to be beyond reasonable doubt.

Burden Of Proof In Cases Of Enforced Disappearance

[67] On the burden of proof, that is, on whose shoulders lie the burden of proving the case, the approach taken in international human rights cases on enforced disappearances, is illustrative to show that the burden of proof lies on the State itself. In the following cases, it was held by the various courts accordingly:

67.1 *Bamaca-Velasquez v. Guatemala*[22], the Inter-American Court of Human Rights held:

> As this Court has often repeated, in cases of forced disappearance, the State's defense cannot rely on the impossibility of the plaintiff to present evidence in the proceedings since, in such cases, it is the State that controls the means to clarify the facts that have occurred in its jurisdiction and, therefore, in practice, it is necessary to rely on the cooperation of the State itself in order to obtain the required evidence.
>
> ... in cases such as forced disappearance – and others ... – the State has better possibilities of assuming the function of proving what it denies, than the individual to prove what he affirms.

67.2 *Godinez Cruz v. Honduras*[23], the Inter-American Court of Human Rights held:

> 141. In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.
>
> 142. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[24]

67.3 *Varnava & Ors v. Turkey*[25], the European Court of Human Rights held:

> 184. As a logical development of this approach, in the situation where persons are found injured or dead, or who have disappeared, in an area within the exclusive control of the authorities of the State and there is *prima facie* evidence that the State may be involved, the burden of proof may also shift to the Government since the events in issue may lie wholly, or in large part, within the exclusive knowledge of the authorities. If they then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn.

67.4 *Bleier v. Uruguay*[26], the Human Rights Committee of the United Nations held:

> 113.3 With regard to the burden of proof, this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information ... In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.[27]

[68] Thus, the burden of proof in cases of enforced disappearances rests with the State. What this means is that, the Panel is entitled to accept inferences submitted by counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and counsel of the Bar Council against the State. It is for the State to adduce satisfactory evidence and give explanations on a balance of probabilities to show that the State was not in any way involved in the disappearance of the person within the definition of enforced disappearance under art. 2 of ICPPED.

Admissibility Of Evidence

[69] The Panel is not constrained or limited by the Evidence Act 1950 in the reception of evidence during the Public Inquiry. A flexible approach is taken whereby evidence which is not usually admitted in criminal and civil proceedings may be received by the Public Inquiry. This is recognised by s. 14(1)(a) and (d) of the Act where it states the "The Commission shall, for the purposes of an inquiry under this Act, have the power – (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine;" and "(d) to admit *notwithstanding any of the provisions of the Evidence Act 1950* (Act 55), any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings."

[70] This flexibility is in line with international standards regarding human rights inquiries in the following cases:

70.1 In the case of *Bamaca-Velasquez v. Guatemala*[28], the Inter-American Court of Human Rights held:

> 97. In an international tribunal such as the Court, whose aim. is the protection of human rights, the proceeding has its own characteristics that differentiate it from the domestic process. The former is less formal and more flexible than the latter, which does not imply that it fails to ensure legal certainty and procedural balance to the parties. This grants the Court a greater latitude to use logic and experience in evaluating the evidence rendered to it on the pertinent facts ...
>
> 131. Taking this into account, the Court attributes a high probative value to testimonial evidence in proceedings of this type, that is, in the context and circumstances of cases of forced disappearance, with all the attendant difficulties, when, owing to the very nature of the crime, proof essentially takes the form of indirect and circumstantial evidence.

70.2 In the case of *Velasquez-Rodriguez v. Honduras*[29], the Inter-American Court of Human Rights held that direct evidence is not the only type of evidence that may be legitimately considered. Circumstantial evidence, *indicia* and presumptions, may also be considered and be admitted so long as they lead to conclusions consistent with the facts. Further, the court held:

> 131. Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterised by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.

[71] Cases of enforced disappearances are usually characterised by attempts to suppress all information by the State. Typically, complainants in such cases do not have direct evidence to show that State agents are concerned in the disappearances and must rely on circumstantial evidence. Complainants also typically do not have the means to identify with precision the State agents concerned in the disappearances.

[72] Evidence adduced before the Panel to show that the State was concerned in the disappearance is usually circumstantial evidence which gives rise to the inference that State agents are involved in the disappearance. It is only through the exercise of the State's investigative power, would the perpetrators, and their roles, be identified with precision.

[73] The consideration in cases where evidence was entirely circumstantial was explained by the Court of Appeal in *Chan Chwen Kong v. Public Prosecutor* [1962] 1 MLJ 307 at paras. E and F, p. 307:

A

> It must, however, be borne in mind that in cases like this where the evidence is wholly circumstantial what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?[30]

B **[74]** In the course of the Public Inquiry, the Panel was entitled as a matter of law to adopt a less constrained and flexible approach in the reception and admission of the evidence, both oral and documentary, than would otherwise have been proper to admit in a civil and criminal trial.

[75] In analysing the evidence available in the case of Amri Che Mat, the C Panel has adopted a more inclusive rather than exclusive approach. Hence, the Panel has *inter alia*, taken into consideration hearsay, circumstantial or presumptive evidence when determining the cumulative effect of the evidence adduced in the Public Inquiry.

The Facts

D

Summary Of Events Before The Disappearance Of Amri Che Mat

Amri Che Mat Practicing Shiaism

[76] Amri Che Mat was born and brought up as a Sunni Muslim. Counsel on behalf of the family of Amri Che Mat informed the Panel that in 2004 E he was introduced to Shia teachings and took an interest in Shiaism. Counsel further informed the Panel that Amri Che Mat had visited Shia centers in Iran and Southern Thailand to explore Shiaism and that Amri Che Mat spoke freely amongst his friends on matters surrounding his beliefs.[31]

F **[77]** On 8 March 2014, there was a Shia gathering in Ijok, Perak. Amri Che Mat was arrested together with one hundred and thirteen others at the gathering.[32] This was the first time Amri Che Mat was faced with the religious authorities and the Police involving his Shia activities.

Inspection At Amri Che Mat's Home

G **[78]** In the afternoon of 21 October 2015, the Mufti of Perlis, Dato' Dr Mohd Asri Zainal Abidin (IW10) ("the Mufti"), and officers from the Mufti's department, accompanied by about twenty police officers, headed by the Perlis Deputy Chief Police Officer, went to Amri Che Mat's house.

H **[79]** The Mufti had requested to see Amri Che Mat. Norhayati, who was at home at the time, informed the Mufti that Amri Che Mat was not in and refused the Mufti's request to enter their home. Nevertheless, Norhafizal bin Mohd Ariffin (IW6) ("Norhafizal"), Amri Che Mat's brother-in-law, who was present agreed to let the Mufti and the group into Amri Che Mat's house. Officers from both the Mufti's office and the Police followed the Mufti I inside.

[80] After being allowed entry into Amri Che Mat's home by Norhafizal, the Mufti then inspected the living room. Photographs were taken during the inspection, and before leaving, the Mufti asked Norhayati to inform Amri Che Mat to meet him at the Office of the Mufti of Perlis the next morning.

[81] As requested, Amri Che Mat went to the Mufti's office together with Norhafizal the following day, on 22 October 2015. The meeting was attended by one Sergeant Wan Nasirudin Pawan from E2 Division of the Special Branch based in Kangar, Perlis; Dato' Mat, a Member of the Fatwa Council of Perlis; and other officers from the Mufti's office and the Fatwa Council of Perlis.

[82] The meeting took place in a meeting room at the Mufti's office and lasted for about an hour. During the meeting, Amri Che Mat was asked by the Mufti of Perlis whether he was a Shia, to which Amri Che Mat replied that he was.

[83] Also during the meeting, the Mufti informed Amri Che Mat that he had received a number of complaints about his activities. Amri Che Mat was then instructed by the Mufti that if he wanted to carry on as a Shia, he and his wife should do so behind closed doors.

Separate Investigations On Amri Che Mat By The Special Branch

[84] Following the meeting at the Mufti's office, ASP Razman Ramli (IW17) ("ASP Razman"), head of the Special Branch, E2 Division in Kangar, Perlis, testified that his unit had started investigating Amri Che Mat to ascertain if he was propagating Shiaism through the non-governmental organisation (NGO) known as Perlis Hope.[33] In his testimony, ASP Razman concluded that he did not find Amri Che Mat or Perlis Hope to be propagating Shiaism.[34]

[85] However, Dato' Awaludin Jadid (IW19) ("Dato' Awaluddin") head of the Special Branch, Bukit Aman, Kuala Lumpur and other officers of E2 Division, Special Branch, Bukit Aman, Kuala Lumpur testified that they did not agree with ASP Razman's conclusion based on their own separate intelligence.[35]

[86] Dato' Awaludin testified that Bukit Aman's investigations into Amri Che Mat had begun even earlier than ASP Razman's investigations and that he, Dato' Awaludin, had access to wider intelligence which concluded that Amri Che Mat and Perlis Hope were in fact propagating Shiaism. Dato' Awaludin further testified that the intelligence that his Division had gathered was passed on to the Mufti during a meeting on 7 October 2016,[36] that is about twelve months after the Mufti, the Mufti's officers and the police officers had visited Amri Che Mat's house on 21 October 2015.

Perlis Hope

[87] On 17 October 2015 Perlis Hope was registered with the Registrar of Societies, just days before the Mufti, the Mufti's officers and the Police Officers visited Amri Che Mat's home on 21 October 2015. Amri Che Mat was one of its founders and its office was within the same premises as his home at C33 Kampung Padang Behor, Kangar.

[88] Mohd Faisol Abd Rahman (IW3) ("Faisol") an activist in and spokesperson for Perlis Hope, and Annuar bin Ismail (IW5) ("Annuar"), a member and the Secretary of Perlis Hope, in their evidence, described Perlis Hope as a non-governmental organisation deriving its support and funding from volunteers and public donations. Faisol and Annuar informed the Panel that Perlis Hope's work was charitable and aimed at assisting the poor and needy in the community regardless of race or religion. Perlis Hope's activities included distributing rice to needy families every month, rebuilding and repairing homes, distributing school uniforms, assisting patients suffering from chronic ailments, and distributing food during Ramadan.

[89] On 20 September 2016, Dato' Seri Shahidan Kassim, the former Chief Minister of Perlis ("Dato' Seri Shahidan Kassim"), labelled Perlis Hope as "Perli No Hope" in a public post on Facebook, undermining the charitable work carried out by Perlis Hope and made accusations against Perlis Hope suggesting Perlis Hope was a Shia organisation.[37]

[90] Further, on 21 September 2016, the Director of the Perlis State Islamic Affairs Department ("JAIP"), Dr Hazman Hassan (IW11) ("Dr Hazman"), issued a letter to the Perlis State Education Department accusing Perlis Hope of being a Shia organisation disguised as a charity and requested the Department to prohibit Perlis Hope from conducting its charitable work with schools in Perlis.[38]

Shiaism In Malaysia

Status Of Shiaism

[91] Shia is a sect of Islam where followers hold very contrasting beliefs from those of the adherents of the Sunni Islamic, which make up the majority of Muslims around the world and is the only denomination whose religious practices, concepts and rituals are recognised in Malaysia.

[92] In 1996, the Special Conference of the Fatwa Committee of the National Council of Islamic Affairs, Malaysia, convened on 5 May 1996 decided that Muslims in Malaysia should only practice the teachings of Islam based on the followers of *Ahli Sunnah Wal-Jamaah* ("1996 Decision of the Fatwa Committee").

[93] The 1996 Decision of the Fatwa Committee decided that Islamic teachings other than those based on the followers of *Ahli Sunnah Wal-Jamaah* were contrary to Islam and thus the propagation of any other doctrine from *Ahli Sunnah Wai-Jamaah*, that is Shia, was prohibited.

[94] Between 1998 and 2013, eleven States in Malaysia issued fatwas to enforce the 1996 Decision of the Fatwa Committee. Therefore, Shiaism, deemed to be contrary to Islam, was dealt with by the Federal authorities under the Internal Security Act 1960 ("ISA") and by the State religious authorities under State Islamic laws. A fatwa against the teachings of Shia was gazetted in the Government of the State of Perlis Gazette on 7 August 2012.

[95] Pursuant to the position taken by the religious authorities, organisations, including NGOs, organised seminars and talks against the propagation of Shiaism. Hence, Shia followers were treated as a problem in relation to Islamic belief in Malaysia and the Police acted upon powers that they purportedly had under the ISA to deal with the perceived threat.

[96] In 2012 the ISA was repealed and replaced by the Security Offences (Special Measures) Act 2012 (SOSMA) effective 31 July 2012. SOSMA restricted the power of detention, increased the rights of detainees and their families and made detentions subject to judicial oversight in public hearings. Since its enactment, according to the evidence adduced, there have not been any reports of actions being taken against Shi'ie under SOSMA. No convictions relating to the propagation of Shiaism under State Islamic laws have been reported by the State religious authorities.

[97] In 2013, public statements were issued identifying Shiaism as not merely an issue of religious deviance, but as a dangerous threat to national security. The then Deputy Prime Minister, Dato' Seri Ahmad Zahid Hamidi announced at a press conference on 30 July 2013, that the Ministry of Home Affairs had made a presentation to the National Security Council on the danger posed by Shiaism and that the report would be presented to the Council of Rulers.

[98] Later the same year, there was debate on amending the Federal Constitution to identify Islam more specifically as being limited to *Sunnah wal-Jamaah* to prevent the spreading of Shiaism. This can be seen in public statements made by the then Deputy Prime Minister and also by the former Inspector-General of Police (IGP), Tan Sri Khalid Abu Bakar.[39]

Shia Gathering In Ijok, Perak On 8 March 2014

[99] On 8 March 2014, a Shia gathering was held in Ijok, Perak. The Police were made aware of the Shia gathering by a letter dated 3 March 2014 sent by Abdul Manap bin Abdul Hamid, Secretary of *Masyarakat Awam Syiah lmamiyyah (Ja'fari) Malaysia*, to the Prime Minister's Office, giving notice that they would be holding a Shia celebration in Kampung Haji Ismail, Kelian Gunung, Ijok, Perak on 8 March 2014.

[100] The letter dated 3 March 2014 was referred from the Prime Minister's Office to the former IGP. The IGP minuted on the letter, that according to a "fatwa kebangsaan" Shia was unlawful, thus, any gathering by them would also be unlawful. The IGP also instructed the Perak Chief of Police to prevent any Shia group from gathering.

[101] After having received the instructions from the IGP, the Perak Chief of Police noted on the letter instructions to the District Police Chief of Selama to take action together with the Special Branch and the State religious department, and to report to the IGP.

[102] On 8 March 2014 at about 10pm, a large contingent of police officers and officers from the religious department raided the Shia gathering in Ijok, Perak. Reports of the number of personnel involved ranged from sixty to one hundred and fifty. Everyone present, including women and children were gathered and taken to the police station lock-up in Selama. Amri Che Mat was amongst them. All were released the next day and there were no charges brought against any of them.

Statements Of Perception Towards Shiaism

[103] On 13 December 2015, Dato' Ayob Khan Mydin Pitchay, Deputy Director of the Counter Terrorism Division of the Special Branch, Kuala Lumpur ("Dato' Ayob") gave a speech at an event called "Seminar Negara Islam, Jihad vs Militan." Dato' Ayob in his address, spoke of the threat to national security posed by the Islamic State ("IS") who he said based their ideology on the teachings of the 14th century Muslim scholar Ibn Taimiyyah. Dato' Ayob did not make any reference to Shia in his address. Instead, Dato' Ayob claimed that the majority of those who joined the Islamic State claimed to be *salafi*[40] without a strong religious foundation.

[104] A day later, on 14 December 2015, Dato' Seri Shahidan Kassim queiried Dato' Ayob's understanding and questioned Dato' Ayob's statement allegedly made against *salafis* and the teachings of Ibn Taimiyyah, a respected *sunny scholar*.

[105] Several days later, on 18 December 2015, the Mufti of Perlis issued a public post on Facebook in defence of Ibn Taimiyyah's works. In his post, the Mufti stated that Shia followers have deceived the public in many ways. Following which, the Mufti gave the work of Zamihan Mat Zin ("Zamihan") criticising Ibn Taimiyyah as an example of one of the ways Shiah deceived the public.

[106] Over a month later, on 20 January 2016, the Mufti of Perlis, mentioned that Zamihan was a student of a Shia scholar from Jordan named Hasan Saqqaf. In the post, the Mufti of Perlis also mentioned that Dato' Ayob was a student of Zamihan. This would suggest that Dato' Ayob Khan was Shia, himself.

[107] On 13 August 2016, Dato' Ayob Khan gave a speech at an event called "Seminar Ancaman Daesh dan Kafir Harbi." In his address, Dato' Ayob stated that he was not a Shia and that in fact, he had been a part of several operations relating to Shiaism, namely the arrest of twelve Shia leaders in Kemunting, Perak in 1997 and the arrest of five followers of Shiaism in an operation in 2000. Dato' Ayob Khan further explained that those arrested were sent to rehabilitation and released upon their recovery because although Shiaism was declared contrary to Islam by the National Fatwa Council, this did not give the authorities the right to take their lives. Dato' Ayob Khan went on to state the dangers of him being labelled as a Shia as such a label may trigger members of the extremist group, IS, to want to murder him.

[108] On 21 August 2016, the Deputy Minister in the Prime Minister's Department, Dato' Asyraf Wajdi Dusuki, was reported in the news as urging the State religious authorities to strengthen enforcement against Shia activities.

Meeting Between Mufti Of Perlis And The Special Branch

[109] On 7 October 2016, a meeting was convened at the Perlis Mufti's office at the request of Dato' Awaludin. Several officers from E2 Division, Special Branch, Bukit Aman and Perlis were present along with several officers from the religious authorities of Perlis.[41]

[110] Dato' Awaludin testified that he had called for the meeting to discuss his intelligence on religious extremism in Perlis, Kedah and South Thailand. He said that the discussion on Shia as religious extremists moved to Perlis Hope and Amri Che Mat. He claimed that Perlis Hope was a front for Shia activity and that Amri Che Mat's home was in fact a Shia centre.[42]

[111] In his evidence, Dato' Awaludin explained that in the past, when the ISA was an available tool to combat social extremism, he would have been able to deal with the propagation of Shiaism. However, he said nowadays he had no jurisdiction to act on this kind of extremism and was obliged to pass his intelligence onto the State religious authorities for them to act on.

[112] Both the Mufti of Perlis and Dato' Awaludin testified that after the detailed presentation at the meeting, each concluded that the matter was very serious but that the other party had the responsibility to deal with it. Dato' Awaludin was of the view that as this involved breaches of State religious laws, it was up to the Perlis religious authorities to take action against Amri Che Mat and Perlis Hope.[43]

[113] On the other hand, the Mufti of Perlis was of the view that these activities were in the realm of national security and it was for the police to act upon. The Mufti also informed Dato' Awaludin that he had no jurisdiction over Perlis Hope which was an approved registered society.[44]

[114] After the meeting, the Mufti of Perlis posted on Facebook and held a press interview on the meeting to address the threat of Shiaism to national security and stability of the country.

[115] On 6 November 2016, Dato' Awaludin was a speaker at a seminar entitled *'Seminar Belia Menentang Keganasan'* organised by an Islamic Non Governmental Organisation *Ahli Sunnah Wal Jamaah*. This seminar was attended by around sixty to one hundred people, consisting of students from the Malaysian National Defence University and members of Muslim NGOs, and it was held at the Ministry of Home Affairs Complex in Kuala Lumpur.

115.1 The main focus of Dato' Awaludin's speech was to warn against Shia activity in the country. He said that there was an urgent need to address the rise of Shiaism and that Shia had infiltrated all levels of society including the Police, Judiciary, religious authorities, and the administration. According to him, this problem was not sufficiently recognised.

115.2 He gave as an example of three Shia mosques in Satun and a Shia centre in Tangalam, in southern Thailand and claimed that these have been turned into training centres for two hundred to three hundred Malay Shia preachers and that they in turn, would be deployed to Malaysia to infiltrate society and to spread Shiaism.

115.3 He also stated that individuals who supported Shiaism must be identified and that his intelligence shows that Shia activity starting in Perlis had spread to Kedah, Penang, Perak, Selangor, Wilayah Persekutuan, Melaka, Johor, Terengganu, Pahang and Kelantan.

115.4 Dato' Awaludin complained of the stripping of police powers and the confusion within the administration on the supervision of religious organisations. In the face of this overwhelming threat and the lack of cohesive action to deal with it, he called on the participants and the larger Muslim community to unite and to eradicate the problem posed by Shias.

Surveillance Of Amri Che Mat's House

[116] For three consecutive days before Amri Che Mat's disappearance, the owner of Bengkel JST Auto Mechanics, Vee Yak a/l Ban Jong (IW8) ("Vee Yak") noticed an unusual occurrence. His motor repair shop is located about one hundred and fifty meters from Amri Che Mat's house along Jalan Padang Behar towards the direction of Kangar. His shop is on the same side of the road as Amri Che Mat's house.

[117] Vee Yak had observed the presence of three cars, two of which were parked across the road from his workshop, in front of a restaurant, known as Kuali Hangat. The cars were parked facing Amri Che Mat's house. He noticed a gold Toyota Vios parked in front of the restaurant from about 9.30am till about 12pm, after which the Toyota Vios left. The Toyota Vios was replaced by a white Honda Civic which was parked at the same location from about 12pm to about 7pm. When the Honda Civic left, it was replaced by a third car, a black Toyota Hilux from about 7pm to about 12 midnight. The Toyota Hilux was parked on Vee Yak's side of the road facing Amri Che Mat's house.

[118] Vee Yak was only able to make these observations until the closing of his motor workshop. He usually closed shop at 9pm but occasionally he worked until later to finish his work. On the three days that he noticed and observed the presence of the cars, he was working until around midnight. On all three days when he left work, the Toyota Hilux was still parked outside his shop. He could not say when the Toyota Hilux left or whether it was replaced by another vehicle after midnight. All that he could inform the Panel was that the Toyota Vios was there when he arrived for work in the morning and that the Toyota Hilux was there when he left his shop at around midnight over the three days in question.

[119] Vee Yak felt this was odd particularly as the cars had tinted windows and the occupants had remained inside the respective vehicles with their engines running throughout. He was afraid that his workshop was being observed/watched by either car repossessors or people who were up to no good against him. He took down the registration number of one of the vehicles, the Toyota Vios and recorded it on a board in his shop. The number of the vehicle he recorded was PFC1623. Vee Yak kept this information to himself until two days after Amri Che Mat's disappearance.

Summary Of Events After The Disappearance Of Amri Che Mat

Facts Of The Disappearance Of Amri Che Mat

[120] On 24 November 2016 at about 7.30pm, Amri Che Mat, while at home, felt tired and decided to take a nap and had requested his wife, Norhayati, to wake him up at 10.30pm. As requested, Norhayati woke him at 10.30pm before she herself went to bed. This was the last time Norhayati spoke to her husband. At around 11.30pm their eldest daughter, Nur Masarrah, saw her father leave their home in his black Toyota Fortuner.

[121] Amri Che Mat left his house to meet his friend Abdul Jamil bin Ahmad Jawi (IW2) ("Jamil"), in Jitra, Kedah, which is approximately a forty five minute drive from his home in Kangar. He went to meet Jamil for coffee and for a chit chat, something he used to do. Amri Che Mat had a little

earlier texted Jamil at 11.11pm to invite him for coffee but Jamil only managed to reply at 11.34pm. Around the same time, shortly after replying Amri Che Mat's text, Jamil spoke to Amri Che Mat on the phone. Amri Che Mat sounded like he was in a hurry and only managed to answer 'ok, ok, ok' and ended the call abruptly.

[122] When Amri Che Mat was driving along Jalan Padang Behar, about five hundred meters away from his house and when he had neared Restoran MakLang, a witness Saiful Afdzan bin Seinei ("Saiful Afdzan"), heard the screeching of tyres and the breaking of glass. When Saiful Afdzan looked out from his restaurant (Restoran MakLang), he saw three vehicles "boxing" in Amri Che Mat's car at about the same time.

[123] Another witness, Syed Amri bin Abd Jalil (IW7) ("Slated Amri") who was riding a motorcycle from the opposite direction, saw the four vehicles and thought it was an accident.

[124] At about 12.30am the next day, Amri Che Mat's car was found abandoned by Yousri bin Khalid ("IW4") at a disused construction site at Bukit Chabang, Kangar, Perlis with three of its windows smashed. Following a police report lodged by Yousri bin Khalid at around 2.20am, the Police managed to trace Norhafizal, the registered owner of the vehicle. Norhafizal is Amri Che Mat's brother-in-law.

[125] Amri Che Mat has not been seen, heard of, or heard from, since 24 November 2016 till now and is believed to have "disappeared".

Events After The Disappearance Of Amri Che Mat

[126] Two days after, around 9am on Saturday, 26 November 2016, Norhafizal and Mohd Aizat bin Zahid (IW14) ("Aizat") a close friend from Perlis Hope, went to check the area along Jalan Behor, attempting to gather information about the disappearance of Amri Che Mat when they met Vee Yak.

[127] Vee Yak testified that he passed the information about the three cars including the registration number of the Toyota Vios to Norhafizal and Aizat. Aizat in his evidence stated that immediately upon receiving the information from Vee Yak, he contacted the Investigating Officer, Inspector Khor Yi Shuen (IW9) ("Inspector Khor") and passed this information on to him on 26 November 2016.

[128] On 8 December 2016 Norhayati lodged a second police report outlining the evidence of Amri Che Mat's nephew, Sharizal Abd Manan, on the suspected surveillance by a Toyota Hilux and a motorcyclist on Amri Che Mat's house. Sharizal Abd Manan was never interviewed by the Police and no statement was recorded from him.

Meeting Between Sergeant Shamzaini And Norhayati

[129] Months later, on the night of 12 May 2018 at about 10.30pm, Sergeant Mohd Shamzaini Mohd Daud (IW20) ("Sgt Shamzaini"), a Sergeant with E5 Division (Economic Intelligence) of the Special Branch in Kangar, Perlis paid a visit to Norhayati at her home. According to Norhayati, Sgt. Shamzaini spoke to her about the disappearance of her husband. They spoke while sitting on the verandah of the first floor of her home. Norhayati's daughter Nur Amirah binti Amri Che Mat (IW13) was present during the meeting.

[130] The visit by Sgt. Shamzaini lasted for two hours and was during a break in the Public Inquiry. Evidence had been recorded for nine days starting from 22 January 2018 to 12 April 2018 and it was scheduled to resume on 16 May 2018. ASP Razman Ramli, the head of E2 Division of the Special Branch in Kangar, Perlis was scheduled to testify on the next hearing date.

Findings Of The Panel

Explanations Given By The Police

[131] The Police and/or the religious authorities have suggested several possible reasons for Amri Che Mat's disappearance, namely:

131.1 That he was facing financial problems either at the instance of his investors in his unlicensed Forex trading or from creditors and therefore voluntarily went missing to avoid them;

131.2 That a disgruntled investor in his Forex business or a creditor had caused his disappearance;

131.3 That the biological uncle of the four children Amri Che Mat and Norhayati were fostering, was angry with him because he was exposing the children to Shia teachings and had caused Amri Che Mat's disappearance;

131.5 That he had entered into a contract marriage with another woman and had run away with her; and

131.6 That he had run away to the Shia centre in Satun, Southern Thailand.

[132] The Panel will deal with the possible scenarios in turn:

132.1 Financial problems:

(a) Although Amri Che Mat was declared a bankrupt twice, no evidence was adduced to suggest he was a target of any of his customers or creditors. No reports were made against Amri Che Mat in connection with his Forex business nor demands made for the return of any money.

(b) ASP Roslan Remeli (IW12), testified that after interviewing Amri Che Mat's investors about his Forex business, he found that none had shown any animosity towards him. The Police themselves had ruled out any connection between Amri Che Mat's Forex business and his disappearance.

(c) Although Amri Che Mat was an undischarged bankrupt, evidence was adduced to show that he had settled all amounts due and owing and was in the process of arranging for his discharge as a bankrupt. No connection can be found between his creditors and his disappearance.

132.2 Foster children:

(a) Norhayati explained that she and Amri Che Mat had been fostering four children for a few years because their father was facing financial hardship. They were taking care of their well-being and education. At the time of Amri Che Mat's disappearance, they were being educated in Thailand.

(b) There were no issues at all with the biological family and in fact, the fostering arrangement was a welcome relief to the family's hardship. Inspector Khor in his evidence said that he had interviewed the children's biological uncle and nothing untoward was found during that interview. It was stated by ASP Roslan that this issue was no longer a part of the investigations.

132.3 Shia activities:

(a) On Amri Che Mat's Shia activities, as mentioned above, neither the police nor the religious authorities were able to produce any complaints or names of complainants from amongst the public. The best that they could do was to refer to rumours that the Mufti of Perlis had heard about some general unhappiness in the neighbourhood but none of the purported neighbours seemed to have raised any complaints and from the list of persons that Inspector Khor interviewed in the course of his investigations, none appeared to be Amri Che Mat's neighbours!

132.4 Contract marriage:

(a) The suggestions by the Mufti of Perlis that Amri Che Mat may have absconded to Southern Thailand or had run away with another woman was unsupported by any evidence. There was no immigration record of Amri Che Mat leaving the country and his passport was left at home. The arrangements he made that evening to meet his friend Jamil, and the general continuity of his life and activities at the time of his disappearance, speak against such speculation. Norhafizal and Norhayati have also testified against this speculation.

[133] As can be seen, none of the possible explanations offered by the Police and religious authorities rise above speculation and may be quite easily debunked. In fact, except for Amri Che Mat's disappearance being connected to his Shia activities, all explanations have been ruled out by the authorities themselves.

Special Branch Watch On Shiaism And The Surveillance Of Amri Che Mat

[134] From the various documents exhibited, it is undisputed that the issue of Shiaism was given a lot of attention by the Mufti of Perlis and the Special Branch, Bukit Aman, Kuala Lumpur and was discussed in the public space. It is also undisputed that Amri Che Mat received close attention and was under surveillance by both the religious authorities and the Special Branch as they had spoken directly to him and had warned him against the propagation of his Shia beliefs during the meeting on 22 October 2015. It is also undisputed that at the meeting on 7 October 2016, it was concluded that Shiaism was perceived as a threat and that action needed to be taken.

[135] On the issue of Shiaism and the surveillance of Amri Che Mat, the Panel makes the following observations:

135.1 The meeting between the state religious authorities and the Police on 7 October 2016 was a meeting led by the Mufti of Perlis and Dato' Awaludin, both of whom held positions of authority and both of whom had expressed very strong views about the threat to national security posed by Shias in Perlis;

135.2 Both the religious authorities and the Police agreed and concluded during the meeting on 7 October 2016, that Shiaism was a serious threat. Nonetheless, both maintain that the meeting was merely for the sharing of intelligence;

135.3 No records as to what was discussed at the meeting and the decisions arrived at were made; and

135.4 Both claimed that the other had jurisdiction over the matter.

[136] The Panel is of the view that the meeting was held to decide on how to deal with the perceived threat of Shiaism in a coordinated way. This raises many concerns as no acceptable justifications have been provided as to why the Police were involved in religious matters. Dato' Awaluddin did not clearly explain what the threats, whether real or perceived, to national security were. The problems were generally described as threats to national security.

[137] The authorities alleged that they acted to confront a threat to national security. However it must be noted that the exact kind of threat, whether it was the propagation of Shiaism, violence, security or religious threat, was never properly defined nor explained in evidence.

[138] Furthermore, the Police contended that they no longer had the power to deal with the threat following the repeal of the ISA and that the matter should be left with the religious authorities. Yet it can be discerned from the evidence that despite losing their 'power' the Police continued to survey members of the public on issues that they claim should be left with the religious authorities!

[139] Importantly, neither the state religious authorities nor the Police were able to show any proof of how or why Amri Che Mat and/or Perlis Hope's social work could be seen as a threat to anyone, let alone a threat to national security.

Enforced Disappearance Of Amri Che Mat

Issue Of Identity

[140] The Panel has no hesitation in concluding that it was Amri Che Mat who was taken away on the night of 24 November 2016 at around 11.30pm due to the following direct evidence of:

140.1 Norhayati who woke Amri Che Mat up on 24 November 2016 at 10:30pm;

140.2 Abdul Jamil who was to meet Amri Che Mat that night in Jitra, Kedah for teh tarik and a chit chat and that Amri Che Mat did not turn up even after he spoke on the phone while on his way to meet Jamil;

140.3 Saiful Afdzan and Syed Amri who witnessed an incident along Jalan Padang Behar, between the traffic lights and Saiful Afdzan's restaurant known as Restoran MakLang;

140.4 Yousri that a Toyota Fortuner was found abandoned with its windows smashed at a disused construction site in Bukit Chabang, Kedah; and

140.5 The Police confirming that a Toyota Fortuner registered in the name of Norhafizal had been found abandoned in Bukit Chabang, Kedah.

[141] From the above evidence, the Panel has no difficulty in concluding that it was Amri Che Mat's Toyota Fortuner that was "boxed" in and that it was Amri Che Mat who was taken away by the occupants of the three 4WD vehicles along Jalan Padang Behor at the material time.

Issue Of The Disappearance

[142] The Panel is of the view that the evidence strongly points to a forcible abduction of Amri Che Mat based on *inter alia*, the direct evidence of Saiful Afdzan and Syed Amri and the circumstantial evidence of Vee Yak.

Direct Evidence Of Saiful Afdzan And Syed Amri

[143] Although Saiful Afdzan did not appear before the Public Inquiry as a witness, his statement which was recorded by officers of SUHAKAM on 17 May 2017 was produced and marked as an exhibit. The statement was admitted as evidence.

[144] From the evidence of Saiful Afdzan and Syed Amri, there is direct evidence to prove that on 24 November 2016 at about 11.30pm, three 4WD vehicles were seen "boxing" in a vehicle along Jalan Padang Behor.

[145] From the evidence adduced, the attention of Saiful Afdzan and his cousin, Mohd Afiq Adli was drawn to the incident that happened in front of their restaurant by the screeching of the tyres and the sound of breaking glass.[45]

[146] Saiful Afdzan testified that he saw the driver of the "boxed" in vehicle coming out of the vehicle in an attempt to run away from the three 4WD vehicles, but the driver was caught and dragged back into one of the vehicles.

[147] At about the same time, Syed Amri who was riding his motorcycle, approaching from the opposite direction, testified that he saw the vehicles stopped on the road. Thinking it was an accident, Syed Amri rode past and left the scene.

[148] Evidence of the guard Yousri, who found Amri Che Mat's car abandoned at a disused construction site in the early morning of 25 November 2016 at about 12.30am, about an hour after Amri Che Mat had driven off from his home in his black Toyota Fortuner.

Circumstantial Evidence Of Vee Yak a/l Ban Jong

a) Surveillance of Amri Che Mat's House

[149] While Vee Yak's evidence on his observations of the three vehicles over the three consecutive days they were parked near his workshop and the fact that Vee Yak had recorded the vehicle number of the gold Toyota Vios (PFC1623) amount to direct evidence, what appears to be the purported surveillance of Amri Che Mat's house by the occupants of the three vehicles at the material time amounts to a strand of the circumstantial evidence.[46]

[150] The Panel accepts the evidence of Vee Yak to be credible. His evidence clearly shows that Amri Che Mat's house was under surveillance by the occupants of these three vehicles over the three consecutive days they were parked near his workshop. Another strand of circumstantial evidence in support of the alleged surveillance over Amri Che Mat's house was the evidence of Amri Che Mat's nephew who had also noticed the unusual presence of cars and motorcycles near Amri Che Mat's house a few days before Amri Che Mat disappeared.

b) Presence Of The Gold Toyota Vios

[151] Vee Yak testified that he passed the information about the three cars including the registration number of the Toyota Vios to Norhafizal. Subsequent to receiving this information from Vee Yak, Aizat immediately contacted and informed Inspector Khor of this information on 26 November 2016.

[152] Besides informing Inspector Khor of the presence of the gold Toyota Vios and its registration number, Aizat also passed the registration number to Annuar bin Ismail (IW5) ("Annuar"), one of his friends and fellow member of Perlis Hope. Annuar in turn passed this information on to one Police Sergeant Asri, his neighbour, and asked him for his assistance to check on the Toyota Vios.

[153] Around 5pm the same day, 26 November 2016, Sergeant Asri, and two other police officers, ASP Fauzi and Inspector Wan Shakirin met with Aizat and Annuar at Restoran D'Orange in Kangar. The police officers told Aizat and Annuar that they had checked on the registration number of the Toyota Vios and concluded that as the car was in Kuala Lumpur it could not have been in Kangar, Perlis at the material time. They told Aizat and Annuar that in all likelihood, the number plate that Vee Yak saw on the Toyota Vios was a false number plate.

[154] Matters rested at that until Inspector Khor testified at the Public Inquiry on 3 April 2018 when he said that after he had received the car registration number from Aizat he conducted a Jabatan Pengangkutan Jalan (JPJ) search on the number and requested his officers to interview and record a statement from the owner of the vehicle. He initially said that he could not recall the name of the owner and that he had ruled out that this was the Toyota Vios that Vee Yak had seen. He said this was because the vehicle was not heavily tinted as stated by Vee Yak and based on his intelligence, the vehicle was in Kuala Lumpur at the material time, and had never been to Perlis.

[155] On further examination, Inspector Khor was shown the JPJ particulars of the vehicle bearing registration number PFC1623. He was asked whether the owner of the vehicle was one Saiful Bahari bin Abdul Aziz ("Saiful Bahari") as stated in the JPJ record. He confirmed that Saiful Bahari was indeed the owner and the person from whom his officer had recorded a police statement. When asked, he said that he could not remember Saiful Bahari's occupation.

[156] Inspector Khor was given a list of written questions, including questions about the Toyota Vios for him to gather evidence about the owner, during a break in the hearing of the Public Inquiry. The list of questions was submitted by counsel for the family of Amri Che Mat to Inspector Khor with

the consent of the Panel. In his written answers, Inspector Khor identified Saiful Bahari as an administrative assistant working at the Police Training Center (PULAPOL) at Jalan Semarak in Kuala Lumpur. In evidence, Inspector Khor said that Saiful Bahari had stopped work at PULAPOL in November 2017. He said he tried to locate Saiful Bahari at his home address but Saiful Bahari could not be found there. Inspector Khor informed that Saiful Bahari's supervisor at PULAPOL was one Inspector Mohd Azizie Abd Hamid (IW21) ("Mohd Azizie"). It was later learnt that Mohd Azizie was in fact holding the rank of an ASP and not an Inspector, attached to the Special Branch, Kuala Lumpur.

[157] ASP Mohd Azizie gave evidence at the Public Inquiry on 6 August 2018 and 27 August 2018. He identified himself as an Assistant Superintendent of Police with the Logistics Management and Housing Department of the Special Branch in Bukit Aman. He said that Saiful Bahari was the only staff attached to him at the material time in PULAPOL and gave the impression that Saiful Bahari's job was as a low level general handyman, said to be in charge of cleaning and maintenance of the Police accommodation in PULAPOL. ASP Mohd Azizie claimed that Saiful Bahari stopped coming to work in early November 2017, while his contract only expired in March 2018. A week after Saiful Bahari stopped coming to work, ASP Mohd Azizie said that he tried to contact him and even visited his home but Saiful Bahari could not be located. He also claimed that Saiful Bahari could not have been in the Toyota Vios sighted by Vee Yak in November 2016 because according to a Schedule of leave which he prepared, Saiful Bahari was working in Kuala Lumpur for the ten days before Amri Che Mat's disappearance. He later confirmed that the Schedule of Leave which he prepared based on Saiful Bahari's leave applications, was for the purpose of giving his evidence at the Public Inquiry.

[158] ASP Mohd Azizie tried to explain the extraordinary fifty four days of leave taken by Saiful Bahari, that this included weekends and that he gave him leave beyond his entitlement because Saiful Bahari had requested for it! No other records apart from the loose leave applications by Saiful Bahari and ASP Mohd Azizie's Schedule of Leave were provided to the Inquiry. However, no other explanation or records apart from the loose leave applications by Saiful Bahari and ASP Mohd Azizie's Schedule of Leave were produced during the Public Inquiry. The purported explanation by ASP Mohd Azizie was not a satisfactory explanation.

[159] Based on the evidence adduced, the Panel makes the following findings:

159.1 The JPJ Registration particulars of the Toyota Vios bearing registration number PFC 1623 was current as at 10 April 2018. According to the particulars, the registration was active and the car was insured until 19 February 2019. This means that from the JPJ

A records, Saiful Bahari was and is the owner of the Toyota Vios at all material times and that he has kept his ownership status including road tax and insurance current.

159.2 In spite of this, Inspector Khor claimed that the Police have not been able to locate Saiful Bahari to testify at the Public Inquiry.

B

159.3 During the hearing at the Public Inquiry, evidence by Inspector Khor relating to the owner of the gold Toyota Vios was not free-flowing. The lack of clarity in the evidence concerning Saiful Bahari is troubling and there appears to be a concerted effort to obscure or suppress all reference to him and his suspected involvement in this case.

C

[160] Significantly, it will be noted that the officers of SUHAKAM were unable to serve the subpoena on Saiful Bahari to secure his attendance at the Public Inquiry as a witness. Importantly also, it is to be noted that no attempt was made by the officers appearing for the Police to produce the police statement recorded from Saiful Bahari as an exhibit and to be used as evidence.

D

Evidence Of Sergeant Shamzaini Mohd Daud

[161] On the night of 12 May 2018 at about 10:30pm, Sgt Shamzaini, a Sergeant with E5 Division (Economic Intelligence) of the Special Branch in Kangar, Perlis paid a visit to Norhayati at her home. According to

E

Norhayati, Sgt. Shamzaini spoke to her about the disappearance of Amri Che Mat. He had informed Norhayati that Amri Che Mat was abducted by a team of officers from E5 Unit of the Special Branch, Bukit Aman, Kuala Lumpur under the command of Dato' Awaludin. They spoke for two hours while seated on the verandah of the first floor of Norhayati's home. Norhayati's

F

daughter Nur Amirah, was present during the meeting.

[162] The fact of his visit to Norhayati's house on the night of 12 May 2018 is not denied by Sgt Shamzaini. However, Sgt Shamzaini has denied the contents of the information said to have been given to Norhayati.

G

[162] Norhayati's version of events of the night of 12 May 2018 is as follows:

163.1 Sgt Shamzaini's visit was unannounced. Norhayati answered a knock on her door, and she asked who it was. Sgt Shamzaini did not answer immediately but asked her if she was Norhayati. When she

H

confirmed this Sgt Shamzaini told her that he wanted to speak to her about her husband and that he could not speak to her outside the house.

163.2 Norhayati then asked him to move his motorcycle out of sight and to follow her up the external staircase to the verandah on the first

I

floor. Her daughter, Nur Amirah joined them at the verandah. Sgt Shamzaini initially sat on the top of the stairs. However when he

saw the lights of a police car on patrol along the road, he moved further down the staircase so that he could not be seen from the road. Norhayati and Nur Amirah sat on the floor of the verandah .

163.3 While at the verandah, Sgt Shamzaini introduced himself as "Sham" and showed Norhayati and Nur Amirah his identity card and the Police identification card. He told them that he was a Sergeant with the Special Branch, Kangar, Perlis under the command of ASP Razman.

163.4 According to Norhayati, Sgt Shamzaini came to see her to give her information on Amri Che Mat's disappearance. He told her that the Perlis Police and ASP Razman had intended to arrest Amri Che Mat for his Shia activities and illegal Forex trading. However, without ASP Razman's knowledge, Amri Che Mat was taken away by a team from the Special Branch in Bukit Aman, Kuala Lumpur under the command of Dato' Awaludin.

163.5 When Sgt Shamzaini told her about the abduction by the Special Branch team, Norhayati asked him about Pastor Raymond Koh. Sgt Shamzaini told her that Raymond was abducted by the same team for "memurtadkan orang"[47] that is for proselytizing Christianity among the Muslims. He told her that that team was also under the command of Dato' Awaludin.

163.6 Norhayati testified that Sgt Shamzaini informed her that the then IGP, Tan Sri Khalid bin Abu Bakar was aware of the operation. He also told her that the then Perlis Chief Police Officer, Dato' Ab Rashid and the former Head of Special Branch in Perlis, one "Mat Ali" were also aware of the operation. The operation was crude and the dumping of Amri Che Mat's car was unplanned.

163.7 He gave her further details that Inspector Khor was instructed to give false evidence about the gold Toyota Vios and that Inspector Khor's evidence was discussed and planned in advance by the Police. He also informed her that the Toyota Vios was in fact present during the abduction and that one Azam Azahari was in the vehicle together with its owner.

163.8 Sgt Shamzaini claimed that he was volunteering this information because what was done was not right and that he did not wish to be complicit. He said that with the change in government, he hoped the truth may be exposed.

163.9 The meeting ended with Norhayati giving Sgt Shamzaini RM100 for him to buy a mobile phone and a SIM card so that they could remain in contact privately. He did not leave any contact details but the understanding was that he would contact her and forward her information.

163.10 Immediately after Sgt Shamzaini left, Norhayati exchanged a number of WhatsApp chat messages with Aizat before speaking to him on the phone. The WhatsApp chat message while in shorthand, contained a summary of the meeting. Aizat asked her to make a note of the meeting lest she would forget the details. She then wrote down some notes about the meeting in a notebook, which was tendered in evidence as exh. 60(a) to (c).

163.11 By the time she had finished writing her notes, Aizat and Annuar came over to her house and she recounted to them what Sgt Shamzaini had told her. After meeting Aizat and Anuar, Norhayati contacted Mohd Faisol Abd Rahman (IW3) ("Mohd Faisol") of Perlis Hope by WhatsApp chat messages and later spoke to him.

163.12 She recounted the visit and the information Sgt Shamzaini gave her to Mohd Faisol.

163.13 Mohd Faisol contacted Sheryll Stothard (IW15) ("Sheryll Stothard"), a social activist and adviser to Norhayati. Sheryll Stothard then contacted Norhayati around 7am on the morning of 13 May 2018 by WhatsApp chat messages and arranged to speak to her at around 11:00 a.m., after consulting the lawyers.

163.14. Following discussions with Sheryll Stothard and when Norhayati did not hear from Sgt Shamzaini, Norhayati decided to lodge a police report so as to create an official record of the meeting with him. She was afraid to lodge the report in Kangar given its "proximity" to her home and had intended to lodge the report in Kedah. However, as she was to meet her lawyers in Selangor, she decided to lodge a report there instead. She met with her solicitors in their office in Petaling Jaya, and lodged her report on 15 May 2018 at the Selangor Police headquarters in Section 9, Shah Alam.

163.15 Norhayati denied meeting Sgt Shamzaini on the morning of 12 May 2018 outside her home as claimed by Sgt Shamzaini.

163.16 Norhayati also denied that the conversation she had with Sgt Shamzaini on the night of 12 May 2018 at her home was about Sgt Shamzaini's intention to rent the business premises occupied by Ris a/l Chooi (Pharid) (IW16) ("Pharid"), which is adjacent to Norhayati's house.

[164] Sgt Shamzaini's version of the events is as follows:

164.1. Sgt Shamzaini denied that he gave any information about Amri Che Mat to Norhayati. He said that he visited the house not knowing that it was Norhayati's home and that he was directed to the house by one Pharid who was running Pharid Audio, a car accessory workshop adjacent to Norhayati's house.

164.2 He initially said that he went to Pharid Audio on the morning of 12 May 2018 to have his car tinted. The shop was closed so he tried to contact Pharid by calling Pharid's number which was displayed on a banner hung outside the premises. This was at 8.56am. As he could not get through to Pharid's line, he made two further attempts. Following which, when he still could not get through he went to a nearby paddy field and waited there until he was able to speak to Pharid at 9.18am.

164.3 While discussing with Pharid about getting his car tinted, Sgt Shamzaini said he also inquired about renting the premises occupied by Pharid, as he wanted to operate a car repair workshop business there. He said that Pharid then told him that he should speak to the owner who occupied the adjacent house as he did not have the owner's telephone number.

[165] Upon assessing Sgt Shamzaini's evidence, the Panel makes the following findings:

165.1 Sgt Shamzaini's evidence contradicted the testimony of several witnesses:

(a) Sgt Shamzaini's statement that he inquired into renting the premises contradicted Pharid's evidence. Pharid had a long lease on the premises where he was running his business, and the lease was only due to expire in 2025. Pharid's evidence was that Sgt Shamzaini inquired generally on whether he knew of any premises for rent. Sgt Shamzaini could not have been referring to Pharid's premises because Pharid was running his business there and has a long lease. Pharid did not evince any intention nor indicate to Sgt Shamzaini that he was going to close down his business! Pharid himself said that there was no discussion with Sgt Shamzaini on the taking over of the lease of his premises.

(b) Further, the contention made by Sgt Shamzaini that he inquired into leasing Pharid's premises to conduct his business is unsubstantiated. Regulation 5(1) of the Public Officers (Conduct and Discipline) Regulations 1993 states that a public servant

A shall not operate a business except with the express authorisation of his or her Head of Department. No such written authorisation nor any proof of what Sgt Shamzaini had intended to run was ever tendered during the Public Inquiry.

B (c) Contradiction with Sgt Shamzaini's sister's, Norhashimah binti Mohd Daud (IW22) ("Norhashimah") testimony. Sgt Shamzaini contended that he called his sister on 12 May 2018 to tell her that he intended to open a workshop in Perlis. However, Norhashima's evidence was that she could not recall what she had discussed with Shamzaini and that it was Shamzaini who C told her prior to her attendance as a witness at the Public Inquiry, that they had discussed about Sgt Shamzaini's intention to open a workshop.[48] There were also instances where she stated that they had not talked about opening a workshop in Perlis.[49]

D (d) Sgt Shamzaini also contended that he met Norhayati twice on 12 May 2018 that is, once in the morning and once in the evening. He said that after he spoke to Pharid he noticed a woman coming out of the house adjacent to Pharid's shop. He went up to her and asked whether the shop was open and when E she told him it was closed, he asked her if it was for rent. He claimed that she then asked him a series of questions about himself. He told her that his name was Sham, and that he had been living in Perlis for the last five to six years. He told her that he was attached to the Special Branch Division at the Police F Headquarters in Kangar. He then claimed that she told him that she was busy and that he should come over at night to talk to her. This version of events contradicts Sgt Shamzaini's own police report where he had stated that he had only met her once in the evening. According to the evidence of Norhayati, Sgt Shamzaini only met her once on 12 May 2018 and that was G in the evening only.

(e) The telephone call logs on the morning of 12 May 2018 of Sgt Shamzaini, before he met Norhayati, showed that he had contacted Aizat, a member of Perlis Hope before he had even H spoken to Pharid. This shows that even before he met Norhayati, Sgt Shamzaini knew that she was somehow connected with Perlis Hope and that was the reason why he had contacted Aizat before speaking to Pharid. Sgt Shamzaini wanted Aizat to pass him Norhayati's number.

I

(f) When he could not get Norhayati's number from Pharid, he tried calling both Pharid and Aizat again that night. It was only after he had failed to get Norhayati's telephone number, that he knocked on the door of her house after 10pm that evening.

(g) This also contradicts Sgt Shamzaini's evidence that he went to Pharid Auto to have his car tinted. This was clearly an excuse to speak to Pharid and to get Norhayati's telephone number. If he had genuinely wanted to get his car tinted he would not have called Aizat before he called Pharid, and he would not have asked Pharid for Norhayati's number.

165.2 Firstly, it is incongruous that a policeman from the Special Branch in Kangar, Perlis would want to meet with the wife of a man whose disappearance was the subject of an ongoing police investigation and a Public Inquiry, in which the actions of the Special Branch officers, both in Kangar, Perlis and in Bukit Aman, Kuala Lumpur were under scrutiny. Sgt Shamzaini surely cannot seriously contend that he did not know of Norhayati's identity because from the contradictions outlined above the Panel can safely infer that he clearly knew whom he was going to talk to before he met Norhayati.

165.3 Secondly, and flowing from the first incongruence, it is the admitted evidence of Sgt Shamzaini that the meeting on the night of 12 May 2018 lasted for two hours, during which time Norhayati confronted him with a series of accusations on the conduct of the police in the disappearance of her husband. The tenancy of the premises occupied by Pharid was not discussed at all except in a very peripheral way. If Sgt Shamzaini is to be believed, it means that he spent two hours listening to Norhayati's accusations and laments about the role of the police in the abduction of her husband and that he finally left after she threatened to lodge a police report against him accusing him of being part of her husband's disappearance?

165.4 It is absurd to suggest that a police officer would have sat on the verandah of Amri Che Mat's house for two hours listening to Amri Che Mat's wife lament on an ongoing investigation when all that he had gone there for was to ask whether the premises occupied by Pharid was for rental. One would have expected that the minute the conversation turned to the police investigation and the ongoing Public Inquiry, Sgt Shamzaini would have left, if indeed his only purpose was to discuss the tenancy.

165.5 The only logical explanation for his telephone call to Pharid was that he wanted to get Norhayati's number from him. The talk of a tenancy is illogical and can only be explained as a ruse or cover up for his real intention which was to speak to Norhayati about the

A disappearance of Amri Che Mat. In all probability he was only trying to speak to Norhayati to arrange to meet her and to pass her the information which she testified that he did.

165.6 No justification was given nor could it be understood why a policeman would go to a lady's home at night knowing that her husband was missing, unless he had some important information he needed to pass to her.

165.7 Sgt Shamzaini's move to sit a little lower on the staircase of Norhayati's verandah when he saw the lights of the Police patrol car was consistent with someone who did not wish to be seen.

165.8 There is considerable confusion in Sgt Shamzaini's evidence on the lodging of his police report on 18 May 2018. What is clear is that he was spoken to by the Head and Deputy Head of the Special Branch in Kangar, Perlis and had his statement recorded on 17 May 2018 by a senior police officer from Bukit Aman, Kuala Lumpur. Sgt Shamzaini only lodged his report on 18 May 2018 and the police have not produced his witness statement at the Public Inquiry. He was clearly under considerable pressure following Norhayati's report. If he was indeed and in fact threatened by Norhayati as alleged, he would have lodged a police report against her at the earliest opportunity and not three days after the meeting.

[166] In short, Sgt Shamzaini's evidence is filled with inconsistencies which raises serious doubts on his credibility. Sgt Shamzaini displayed inconsistent and odd behaviour in explaining how he came about Pharid's and Aizat's telephone numbers. The Panel is of the considered view that on a balance of probabilities, Norhayati's version of events is more credible and should be accepted on the following grounds:

166.1 Norhayati's actions post Sgt Shamzaini's visit are consistent with the actions of someone who is telling the truth. At the very least her actions show her to be a person of credibility and her evidence of Sgt Shamzaini's visit and the information he gave her cannot be dismissed as fabricated or incredulous.

166.2 Norhayati has no reason to lodge a police report against Sgt Shamzaini who was at all times a total stranger to her. She did not even know of his existence had he not met her that night. In any event, the police report lodged by Norhayati did not make any accusations against Sgt Shamzaini as he had contended, but was merely to record that such an event occurred.

166.3 Her evidence is corroborated by the evidence of Nur Amirah, her daughter, who was present during the meeting. Nur Amirah is not a minor and attends university. She had testified that she went into the house to get RM100 to hand to Sgt Shamzaini to enable him to purchase a phone so that he could keep in contact with her mother.

166.4 Norhayati's evidence is also corroborated by the evidence of her friends and advisors and Aizat and Faisal, with whom she was in immediate contact following Sgt Shamzaini's visit. There are no material inconsistencies in their evidence.

166.5 The notes on the meeting written by Norhayati immediately after Sgt Shamzaini left are contemporaneous and are strong corroborative evidence.

166.6 Norhayati's notes contain facts which could not have come from any other source but from Sgt Shamzaini himself:

(a) There is a reference to the Toyota Vios being located in Jalan Semarak as recorded in her notes after the visit. Jalan Semarak is where PULAPOL is located in Kuala Lumpur and where Saiful Bahari was working in November 2016. There is no indication of Jalan Semarak being disclosed in any of the evidence adduced in the Public Inquiry and her notes referring to Jalan Semarak could have only come from Sgt Shamzaini; and

(b) The name Azam Azahari that was recorded in Norhayati's note. As it turned out, he was a Special Branch officer who had served in Bukit Aman, Kuala Lumpur and later in Perlis and who is now on transfer to Terengganu. Notwithstanding Sgt Shamzaini's denial of all knowledge or involvement in Amri Che Mat's disappearance, Norhayati would have had no means of knowing that such a person even existed unless Azam Azahari's name was given to her by Sgt Shamzaini.

166.7 The making of the police report by Norhayati adds to the credibility of her evidence. The information that she reported to the police consisted of very serious allegations of an enforced disappearance carried out by the Police in particular the Special Branch, Bukit Aman. It was not made lightly and as a teacher and educated person, she would be fully aware of the consequences of making a false report.

[167] Although the information given by Sgt Shamzaini to Norhayati during their meeting on the night of 12 May 2018 is hearsay evidence, the Panel holds the view that such evidence is nonetheless admissible pursuant to the provisions of s. 14 of the Act.[50]

Shortcomings In The Police Investigations

[168] Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and the Bar Council have submitted that the police investigations into the disappearance of Amri Che Mat are "sham" investigations and that the disappearance has not been treated with serious effort or endeavour by the Police to uncover the truth.

[169] Upon analysing the evidence of the witnesses and the submissions of Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM, Counsel of the Bar Council and Officers Appearing for the Police, the Panel is of the view that there are indeed several shortcomings in the police investigations into the disappearance of Amri Che Mat as summarised below:

169.1 Delay in appointing the investigating officer

(a) On 25 November 2016 at around 2.22am, Yousri lodged a police report that he had found a vehicle with three of its windows smashed in Bukit Chabang, Kangar, Perlis.

(b) Around 6am Norhafizal received a call from the Police informing him that a vehicle was found at Bukit Chabang, Kangar, Perlis and requested for him to go to the Kangar Police Station to identify the said vehicle.

(c) Around 7am Norhayati and Norhafizal arrived at the disused construction site at Bukit Chabang, Kangar, Perlis and identified the Toyota Fortuner.

(d) Around 12.20pm Norhayati lodged a police report indicating her concern for the safety of her husband. She reported that she had not been able to contact him and that his car was found with the windows smashed and that important documents were missing.

(e) The Panel notes that while the Police were quick to act upon the police report lodged by Yousri and had managed to trace the owner of the Toyota Fortuner within four hours. Regrettably, the Investigating Officer, Inspector Khor was only appointed at 4pm on 25 November some fourteen hours after the discovery of the Toyota Fortuner was reported by Yousri.

(f) The Panel is of the view that in light of the very suspicious circumstances in which the Toyota Fortuner was found, with the windows smashed, road tax and license plates missing, the Police should have appointed an investigating officer immediately, upon Norhayati informing the Police at about 7am

that Amri Che Mat was missing. In cases such as suspected abduction or even missing persons, early commencement of investigations is of the essence.

169.2 Classification of case as missing person case

(a) Throughout the Inquiry, witnesses from the Police maintained that the classification of Amri's disappearance was correctly classified as that of a missing person case. They claim that they had insufficient evidence, to raise the classification to one of abduction.

(b) It is inexplicable that Amri Che Mat who was under surveillance by the Special Branch both in Kangar and in Bukit Aman and whose disappearance had been reported with his car found with its windows smashed at a disused construction site, should be treated as a simple case of a missing person and a junior officer in the Criminal Investigation Department ("CID") would be appointed to investigate his disappearance.

(c) The Police have not provided any acceptable justifications for their refusal to reclassify the case of Amri Che Mat.

169.3 Appointing a junior officer

(a) Inspector Thor was assigned as the Investigating Officer by ASP Roslan Remeli during an internal CID meeting.

(b) Inspector Khor was a fresh university graduate and had only been a part of the police force around six months earlier. In other words, Inspector Khor was a very junior probationary officer. Inspector Khor admitted that he was inexperienced as he had handled only two or three missing persons cases before and only seventy other general cases. Inspector Khor also had no specialized CID training and the specialist training that he had received was in handling domestic violence.

169.4 Shortcomings of Inspector Khor's investigations:

(a) Inspector Khor claimed that he had canvassed the scene along Jalan Padang Behar shortly after he was assigned the case however he did not manage to gather any information.

(b) Nonetheless, friends of Amri Che Mat actively sought for answers into the disappearance of their friend Amri Che Mat. Any relevant information they obtained through their own efforts was immediately forwarded to Inspector Khor as the Investigating Officer. Despite being given information of possible witnesses, there was a delay by the Police in interviewing these witnesses and recording their statements.

A

(c) There were three witness to the abduction of Amri Che Mat: Saiful Afdzan, his cousin Mohamad Afiq Adli ("Afiq") and Syed Amri.

(d) Saiful Afdzan and Afiq witnessed the abduction from Restoran MakLang. Both Saiful Afdzan and Afiq were never interviewed by the Police. In fact, the Statement from Saiful Afdzan was recorded by the officers of SUHAKAM. The Police also failed to secure the attendance of Saiful Afdzan.

B

C

(e) The third witness, Syed Amri, testified that he was interviewed twice by the Police, once shortly after 25 November 2016 and another time a week later. It should be noted that Syed Amri testified that during these two interviews by the Police, no statement was recorded and that his statement was only recorded in January 2018, around fourteen months after Amri Che Mat's disappearance.

D

(f) There was also a delay in interviewing Vee Yak who testified that he was only interviewed by the Police a month later at his workshop. Further, Vee Yak testified that his statement was only recorded in October 2017, around eleven months after the disappearance of Amri Che Mat.

E

(g) Furthermore, Inspector Khor had initially quickly ruled out the information given by Vee Yak regarding the gold Toyota Vios. Inspector Khor claimed that the car was in Kuala Lumpur at the material time and that it could not have been the car that Vee Yak saw. It should be noted that Inspector Khor came to this conclusion without even speaking to Vee Yak. Moreover, having been made aware that the owner of the gold Toyota Vios was in Kuala Lumpur, Inspector Khor did not interview the owner himself but had asked another officer to do so. Thus, Inspector Khor ruled out the gold Toyota Vios without even speaking to Vee Yak or the owner of the vehicle.

F

G

169.5 Reluctance to disclose information about Saiful Bahari

(a) The lack of clarity on the evidence concerning Saiful Bahari is troubling and there appears to be a concerted effort to obscure all reference to him and his involvement. This is supported by the information disclosed by Sgt Shamzaini that Inspector Khor was instructed to lie about the Toyota Vios.

H

I

(b) The owner of the gold Toyota Vios was Saiful Bahari. The reluctance with which his identity and designation as a contract worker with Special Branch, Bukit Aman, Kuala Lumpur has been highlighted above.

(c) Officers who were asked to provide information relating to the Toyota Vios quickly dismissed it as being irrelevant and insignificant in the police investigations as the car was in Kuala Lumpur at the material time.

(d) Information relating to Saiful Bahari was only disclosed in August 2018 during the Public Inquiry.

169.6 Failure to locate Saiful Bahari and secure his attendance at the Public Inquiry

(a) It is difficult to accept that the Police were unable to trace and locate one of their own officers who had worked there for 18 years, even if he is no longer part of the police force.

(b) Roeshan, a witness in the Public Inquiry into the disappearance of Pastor Raymond Koh testified that he had seen several men come out of the vehicles that "boxed" in Pastor Raymond Koh's vehicle. If the Police had located Saiful Bahari, he could have been called to participate in an Identification Parade for Roeshan to identify whether that person was at all present at the scene of the crime at the material time.

[170] The above illustrates that in general, there was no sense of urgency in the police investigations. In fact, a lackadaisical attitude was adopted by the police officers in the investigations into the disappearance of Amri Che Mat.

Conclusion

Enforced Disappearance By Agents of the State

[171] The Panel is of the considered view that the enforced disappearance of Amri Che Mat was carried out by agents of the State namely, the Special Branch, Bukit Aman, Kuala Lumpur, within the definition of the first limb of art. 2 of ICPPED.

[172] The basis for this conclusion can be found in the evidence of Norhayati who testified that Sgt Shamzaini had told her on 12 May 2018 at about 10.30pm that it was the Special Branch, Bukit Aman, Kuala Lumpur which had carried out the enforced disappearance of Amri Che Mat.

[173] The basis for this conclusion, also arises from the direct evidence of Syed Amri and Saiful Afdzan. Syed Amri testified that he saw the "boxing" in of a Toyota Fortuner along Jalan Padang Behar while Saiful Afdzan testified that he saw the driver of the Toyota Fortuner being chased by several men in front of his restaurant, known as Restoran MakLang on 24 November 2016 at about 11.30pm.

[174] The circumstantial evidence adduced in the hearing proves on a balance of probabilities that it was Amri Che Mat, who was driving the Toyota Fortuner when it was "boxed" in at the material time and about an hour later, Amri Che Mat's Toyota Fortuner was found abandoned at the disused construction site at Bukit Chabang, Kangar.

[175] The conclusion of the Panel is also supported by the direct evidence of Vee Yak who had testified that he had noticed three vehicles taking turns to keep surveillance on Amri Che Mat's house three days before his disappearance and that he had in fact taken down the number of the gold Toyota Vios (PFC1623). Vee Yak informed Faisal and Annuar of the number, who in turn informed Inspector Khor of the same. It will be noted that Sgt Shamzaini had also informed Norhayati that a gold Toyota Vios was present at the scene when Amri Che Mat was "taken" at the material time. The presence of a gold Toyota Vios was mentioned by Norhayati in her police report following the meeting with Sgt Shamzaini.

Enforced Disappearance By Non-State Agents

[176] The Panel further finds that there is no evidence to support the contention, as suggested by Counsel on behalf of the family of Amri Che Mat, that Amri Che Mat was abducted by persons or groups of persons acting with the authorization, support or acquiescence of the State.

Refusal To Acknowledge The Deprivation Of Liberty

[177] The enforced disappearance of Amri Che Mat was "followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law" as set out in art. 2 of ICPPED.

[178] This conclusion on the refusal by the State, namely the Police, to acknowledge the enforced disappearance is supported by the fact that to date, the Police have refused to reclassify the disappearance of Amri Che Mat as a case of enforced disappearance from the case of a missing person.

Common Features Between The Two Disappearances

[179] The Panel's conclusions are further supported by the common features between the disappearance of Pastor Raymond Koh and Amri Che Mat which are strands of circumstantial evidence when considering the enforced disappearances of Amri Che Mat and Pastor Raymond Koh together, namely:

179.1 The cars in which Amri Che Mat and Pastor Raymond Koh were travelling in at the material time, were "boxed" in by three black 4WD vehicles;

179.2 Three windows of Amri Che Mat's vehicle and a window of Pastor Raymond Koh's vehicle were smashed; and

179.3 The *modus operandi* of the enforced disappearance of both cases bore uncanny similarities.

[180] The common features that the Panel has taken note of are explained further in the following:

Religious Issues

[181] Amri Che Mat was born and brought up as a Sunni Muslim. However, he later took an interest in Shiaism where the followers hold very contrasting beliefs from those of the adherents of Sunni Islamic. Amri Che Mat was one of the founders of Perlis Hope, an organisation that undertakes to assist the poor and needy in the community regardless of race or religion. However, Perlis Hope was suspected by the then Chief Minister of Perlis, Dato' Seri Shahidan Kassim and the Director of Perlis State Islamic Affairs Department ("JAIP"), Dr Hazman Hassan to be a Shia organisation. Further, Amri Che Mat's home, which is adjacent to the office of Perlis Hope, was inspected by the Mufti of Perlis, his officers, together with police officers from the Special Branch, Kangar, Perlis.

[182] Pastor Raymond Koh was a pastor at the Evangelical Free Church in Petaling Jaya from 1994 to 2004. Following that, he formed Harapan Komuniti together with two others to carry out social and charity work among marginalised and underprivileged communities. DUMC was later raided by Selangor State Islamic Affairs Department's ("JAIS") officers, together with a team of policemen, as there were several Muslim individuals who were found to be present at a Thanksgiving Fundraising Event.

[183] The Panel finds that Amri Che Mat and Pastor Raymond Koh were both individuals targeted by religious authorities on allegations that they were involved in matters against Islam in Malaysia.

Direct Surveillance

[184] The Panel also found that there was direct surveillance on the activities carried out by both Amri Che Mat and Pastor Raymond Koh in their respective organisations before their disappearances.

[185] It is undisputed that Amri Che Mat was under the close surveillance of the religious authorities, Special Branch in Kangar, Perlis and the Special Branch in Kuala Lumpur. In or around October 2015, the Mufti of Perlis, and the officers from the Mufti's department inspected Amri Che Mat's house after receiving a number of complaints about his activities in relation to Shiaism. Following that, the religious authorities and the police officers from the Special Branch spoke to Amri Che Mat directly and warned him against the propagation of his Shia beliefs during the meeting on 22 October 2015.

[186] On the other hand, in the case of Pastor Raymond Koh, following the JAIS raid at the Thanksgiving Fundraising Dinner organised by Harapan Komuniti, Susanna testified that Pastor Raymond Koh and his family were often stopped and questioned by Special Branch officers at immigration checkpoints in Johor Bahru and KLIA Airport whenever they returned from Singapore and overseas. Further, the Federal Minister of Islamic Affairs, Jamal Khir Baharom also confirmed that Harapan Komuniti was investigated for the alleged proselytisation of Muslims.

Similar Modus Operandi

[187] The Panel is of the view that the *modus operandi* of the disappearances of Pastor Raymond Koh and Amri Che Mat bore uncanny similarities.

[188] In the disappearance of Amri Che Mat, there was direct evidence by Saiful Afdzan and Syed Amri that they saw a vehicle which matched the description of Amri Che Mat's Toyota Fortuner being "boxed-in" by three 4WD vehicles. The driver later attempted to run away from the three 4WD vehicles, but he was caught and dragged back into one of the said vehicles.

[189] In the Public Inquiry into the disappearance of Pastor Raymond Koh, Roeshan testified that he saw a car being "boxed-in" by three black 4WD vehicles while he was driving along Jalan 5548/10, Kelana Jaya, Selangor. The driver was seen being dragged out of his car and put into one of the 4WDs. This description of the *modus operandi* was later supported by the CCTV footage obtained by Pastor Raymond Koh's family.

[190] Further, in both cases, the persons dragging Amri Che Mat and Pastor Raymond Koh into one of the vehicles, were described to be wearing black clothing.

Presence Of Gold Toyota Vios

[191] The Panel is of the further view that a gold Toyota Vios seen parked near Amri Che Mat's house before his disappearance and that a gold Toyota Vios seen at the scene of the abduction of Pastor Raymond Koh was no mere coincidence.

[192] In the Public Inquiry into the disappearance of Amri Che Mat, Vee Yak testified that he noticed a gold Toyota Vios was parked across the road from his workshop for three consecutive days before Amri Che Mat's disappearance. He took down the car registration number of the gold Toyota Vios (PFC1623) and this information was later given to Inspector Khor by Aizat. Norhayati also testified that Sgt Shamzaini had informed her that the gold Toyota Vios was in fact present during Amri Che Mat's abduction and that she should advise her solicitors to harp on the fact in the next hearing before the Panel.

[193] In the Public Inquiry into the disappearance of Pastor Raymond Koh, Roeshan testified that besides the three black 4WD vehicles, there was a gold Toyota Vios at the scene of the incident at Jalan 5S4B/10, Kelana Jaya. Following that, he further testified that there was an Indian man who told him to "back off" when he got closer to the scene of the incident. Based on the CCTV footage obtained in the Public Inquiry of Pastor Raymond Koh, it is clear that the Indian man described by Roeshan, was a passenger in the gold Toyota Vios. He had approached Roeshan's car when he saw Roeshan drawing near.

I. Recommendations Of The Panel

[194] Pursuant to the Panel's last Term of Reference "to recommend measures or guidelines to be taken to ensure that such alleged breach or breaches do not recur," the Panel makes the following recommendations:

Authorities To Respect Freedom Of Religion As A Fundamental Human Right

[195] The fundamental human right to freedom of religion is explicitly set out in the Universal Declaration of Human Rights as well as in art. 11(1) of the Federal Constitution of Malaysia read with art. 11(4) which states that "State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam." Freedom of religion is also recognised in several other instruments such as the International Covenant on Civil and Political Rights ("ICCPR"), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and resolutions of the Human Rights Council and the General Assembly, to name a few.

[196] It is therefore vital that the State and its agents, including the Police and equally the State Religious Authorities, recognise and respect this right.

Demarcation Between The Police And The Religious Authorities

[197] From the evidence adduced during the Public Inquiry, it is clear that both the Police and the religious authorities are uncertain of the extent of their powers and jurisdiction in respect of the enforcement against the propagation of Shiaism.

[198] During the Public Inquiry, several concerns regarding the interaction between the Police and the State religious authorities were raised, *inter alia*:

198.1 Meetings and discussions were held where the subject matter of the meetings were deliberately restricted to the public, how these meetings came about, their content, and the decisions made have not been disclosed. No clear explanation as to what information was shared, why it was shared, or even on what authority such information can be disseminated, was given by the religious authorities or the Police; and

198.2 No formal complaints were lodged to the religious authorities or to the Police that could justify why the religious authorities or the Police needed to look into the activities of Amri Che Mat or Perlis Hope. Even if the religious authorities had good grounds to look into the activities of Amri Che Mat or Perlis Hope, no justifiable or acceptable reason was given as to why Police presence was required at the material time. There was no evidence whatsoever to suggest that the security of the religious authorities or any other party was at risk at any time.

[199] The Panel is of the view that the Police should not be involved in religious matters unless the situation warrants such intervention as explained in para. 200 below. Therefore, a clear demarcation of police interaction with other departments such as the religious authorities in this case and agencies of the government must be drawn up, shared with the public and enforced accordingly.

[200] The Panel recognises that there may be situations where religious authorities may need the assistance of the Police so as to ensure that law and order is maintained in the country, where the religious authorities may not have the adequate support and infrastructure to deal with such situations. As such, there must be clear Standard Operating Procedures (SOPs) to govern the intervention of the Police. Importantly it must be emphasised that Police intervention to maintain law and order should only be exercised in situations of real, grave and imminent threats to the national security of the country.

Reforms to Standard Operating Procedures of the Police

[201] Throughout the Public Inquiry, several complaints were made against the Police. The apparent lack of cooperation, suppression and concealment of evidence by the Police was evident during the course of the hearing of the Public Inquiry. The Panel has highlighted some shortcomings in the Police Investigations in paras. 168 to 170 above. The Panel therefore, makes the following recommendations:

Investigation Papers

[202] The Panel is of the view that, provided the disclosure of the documents contained in the investigation Paper requested, do not prejudice ongoing investigations, such documents such as the sketch plan of the scene should be declassified, produced and be admitted in the Public Inquiry as evidence to facilitate the Panel's investigations in the interests of justice and public interest.

Cases Of Missing Persons, Abductions And Disappearances

[203] In cases of suspected missing persons, according to the Police protocol, 24 hours must have lapsed before a case can be classified as a "missing persons" case. The Panel calls on the Police to review this protocol in cases where there are overwhelming circumstances that point to an abduction or involuntary disappearance of a person.

[204] A distinction between this class of cases is necessary so that each case is dealt with appropriately and that no time is wasted. The investigations have to be conducted urgently to increase the chances of finding the missing persons safely.

[205] Reforms on the standard operating procedures should implement stringent training on communications protocol to address missing persons cases and include procedures such as informing the progress of the case to the family members and members of the public timeously.

[206] In view of the Panel's finding that Amri Che Mat is a victim of an enforced disappearance, the Panel urges the Police to reclassify Amri Che Mat's case as an enforced disappearance case, from that of a missing persons case, and to recommence investigations accordingly.

Role Of The Special Branch

[207] Throughout the Public Inquiry, many raised their concerns on the role and functions performed by the Special Branch in public order policing. The Royal Police Commission recognised that there appears to be no legal provisions dealing with the functions, powers and duties of the Special Branch.[51] The Panel recommends that the Special Branch be made

accountable and its powers and responsibilities be spelt out in law so that it can function impartially and independently and to clearly define the term 'security' to avoid the abuse of power, to further scrutinise the agency and to increase their accountability.

Independent Police Complaints and Misconduct Commission ("IPCMC")

[208] Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and Counsel of the Bar Council have submitted that it will be an integral part of the primary investigations into the disappearance of Amri Che Mat to investigate the conduct of the Police's investigation to date. This is based on their belief that the investigations are a sham intended to cover the identities of the abductors and those behind them and that if the investigation itself is investigated those controlling the investigation will be exposed and through them, the identities of the abductors may be revealed.

[209] This supports the call by the Bar Council to establish the IPCMC[52] so that allegations against the Police such as in this case be addressed adequately.

[210] Many have called for the setting up of the IPCMC as an independent oversight mechanism for the Police since the public has very little confidence in the Police to abide by the rules and regulations in safeguarding the interests of the public.

Set Up Of Special Task Force To Reinvestigate The Disappearance Of Amri Che Mat

[211] Following the Panel's findings, it is up to the police authorities to properly investigate and bring to book the culprit or culprits responsible. Every effort must be made to track down the abductors of Amri Che Mat in a thorough police investigation. For starters an experienced Investigating Officer should be appointed to reinvestigate the case.

[212] The family needs some closure and answers can only be provided by the State. It is believed that those who have been put in charge so far are withholding the answers to these questions, or are refusing to undertake a diligent exercise to discover them, hence a new and separate task force needs to be set up to re-investigate the disappearance of Amri Che Mat.

[213] Therefore, the Panel recommends that a special task force be set up to reopen and re-investigate the case of Amri Che Mat as an enforced disappearance case, instead of a missing persons case.

[214] To ensure a just disposal of the case and the carrying out of proper investigations, the Panel proposes the following guidelines for the operation of the Special Task Force:

214.1 The Special Task Force should comprise of independent investigators to be appointed by the Attorney General. In the event there is any conflict of interest, they ought not to be appointed. In selecting members of the Special Task Force, the appointing parties shall have regard to, *inter alia*, the following:

(a) Persons who have no current or past connections with the criminal investigations conducted into the disappearance of Amri Che Mat;

(b) Persons who have no current or past connections with any current or past member of the E2 Division of the Special Branch Kangar, Perlis and Special Branch, Bukit Aman, Kuala Lumpur.

(c) Persons who have no current or past connections with current or past members of the Perlis religious authorities.

214.2 The Police shall forward all investigation papers and/or intelligence gathered so far in connection with the disappearance of Amri Che Mat to the Special Task Force for its further action;

214.3 The Special Task Force shall report to the family and SUHAKAM at regular intervals on the progress of its investigations;

214.4 The Special Task Force shall produce a report on the findings of the Special Task Force's investigations which will be made available to the public as soon as possible.

Legal Reforms

Amendments To The Law In Malaysia

[215] The Panel recommends that the Government of Malaysia should review the Penal Code and the Criminal Procedure Code to incorporate enforced or involuntary disappearances under a category specific to cases involving missing persons. In other words, there should be amendments to effectively make enforced disappearance an offence under the Penal Code, in addition and separate from the offence of abduction and kidnapping.

Ratifying International Instruments

[216] Malaysia has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance 2006.

216.1 By ratifying the Convention, Malaysia will assume an international obligation to eradicate enforced disappearance. The measures set out in the Convention include provisions on, among others

(a) the effectiveness of investigations into enforced disappearances and involuntary disappearances[53];

A

(b) bringing those directly and indirectly involved to account for their actions[54];

(c) the creation of an additional offence in the penal law with enhanced sentencing for enforced disappearances[55];

B

(d) the provision of information to the families of victims[56]; and

(e) the training of law enforcement officers[57].

216.2 In short, the ICPPED provides guidelines on identifying elements of an enforced disappearance and clearly outlines the role of the Government in investigating the offence and other related offences

C

216.3 The Government should utilise ICPPED to produce a framework for the introduction of legislation to criminalise enforced disappearance as well as to fill up the missing provisions in Malaysia's legislation.

[217] Further, Malaysia has also not ratified the International Covenant on

D

Civil and Political Rights 1966. This treaty obligates its members to protect and preserve basic human rights, such as: the right to life and human dignity; equality before the law; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial; right to family life and family unity; and minority rights.

E

[218] Following the ratification of the international treaties above, the Government should take further steps to give legal validity to ICPPED and ICCPR in Malaysia to better enable agencies to resolve the issue of 'enforced disappearance'.

F

[219] In conclusion, the Panel reiterates that in carrying out the Public Inquiry, SUHAKAM was discharging its duty to inquire into infringements of human rights under s. 4(1)(d) of the Human Rights Commission of Malaysia Act 1999, and that the recommendations in this report are made in exercise of SUHAKAM's powers under s. 4(2)(b) of the Act which provides that SUHAKAM may "advise the Government and/or the relevant

G

authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken."

[220] The findings and recommendations herein are the unanimous findings and recommendations of the Panel of Inquiry.

H

I

Addressing The Terms Of Reference

[221] The Panel has reached the following conclusions in relation to its Terms of Reference:

221.1 In response to para. (a):

- The disappearance of Amri Che Mat was a case of enforced disappearance as defined under the International Convention for Protection of all Persons from Enforced Disappearance; and
- The case of the disappearance of Amri Che Mat was neither a case of voluntary disappearance nor a case of involuntary disappearance in breach of the ordinary criminal law;

221.2 In response to paras. (b)(i), (ii) and (iii):

- The enforced disappearance was carried out by the Special Branch, Bukit Aman, Kuala Lumpur;

221.3 In response to para. (c):

- The Panel finds that the Royal Malaysian Police have not taken adequate steps to investigate the enforced disappearance of Amri Che Mat;

221.4. In response to para. (d):

- The recommended measures or guidelines to be taken to ensure that such enforced disappearances do not recur are as set out above in part I. Recommendations of the Panel above.

Acknowledgment

[222] The Panel wishes to thank all the parties for their attendance, research and submissions, in the conduct of this Public Inquiry. The Panel further thanks learned Counsel on behalf of the family and of the Bar Council for having volunteered their services *pro bono* to the family of Amri Che Mat and to the Bar Council respectively and to the Assisting Officers of SUHAKAM and to the Officers Appearing for the Police for their contributions in the conduct of this Public Inquiry.

[223] The Panel wishes to express its deepest concern and sympathies to the family of Amri Che Mat and his loved ones for the grief, anxiety and sadness arising from the enforced disappearance of Amri Che Mat since 24 November 2016. We are sorry we are not able to trace the whereabouts of Amri Che Mat.

Schedule 1: List Of Inquiry Witnesses

Inquiry Witness ("IW") Number	Name
IWI	Norhayati binti Mohd Ariffin
IW2	Abdul Jamil bin Ahmad
IW3	Mohammad Faisol bin Abd Rahman
IW4	Yousri bin Khalid
IW5	Annuar bin Ismail
IW6	Norhafizal bin Mohd Ariffin
IW7	Syed Amri bin Syed Abdul Jalil
IW8	Vee Yak a/l Ban Jong
IW9	Inspektor Khor Yi Shuen
IW10	Dato' Dr. Mohd Asri bin Zainul Abidin
IW11	Dr. Hazman bin Hassan
IW12	ASP Roslan bin Remeli
IW13	Nur Amirah binti Amri
1W14	Mohd Aizat bin Zahid
IW15	Sheryll Christine Stothard
IW16	Ris a/l Chooi (Pharid)
IW17	ASP Razman bin Ramli
IW18	DSP Azam Azahari bin Othman
IW19	YDH CP Dato' Awaludin bin Jadid
IW20	Sarjan Mohammad Shamzaini bin Mohd Daud
IW21	ASP Mohd Azizie bin Abd Hamid
IW22	Norhashimah binti Mohd Daud
IW23	Tan Sri Dato' Khalid bin Abu Bakar
IW24	Muhammad Faiz bin Abdul Rahman

Schedule 2: List of Exhibits

Exhibit No.	Description of Exhibit	Date marked
Exhibit 1	Police Report No. BESERI/001673/16 lodged by Norhayati binti Mohd Ariffin dated 25.11.2016	22.1.2018
Exhibit 2	Police Report No. KANGAR/008875/16 lodged by Norhayati binti Mohd Ariffin dated 8.12.2016	22.1.2018
Exhibit 3(a) to (d)	Photograph of Toyota Fortuner taken on 25.11.2016	22.1.2018
Exhibit 3(e) to (f)	Photograph of Toyota Fortuner taken on 19.1.2018	22.1.2018
Exhibit 4(a)	Perlis Hope volunteers donating rice	22.1.2018
Exhibit 4(b)	Perlis Hope volunteers building Pak Dani's house	22.1.2018
Exhibit 4(c)	Perlis Hope volunteers donating porridge	22.1.2018
Exhibit 4(d)	Perlis Hope volunteers fixing a house	22.1.2018
Exhibit 5(a) to (c)	Photograph of MAIP inspection taken on 21.10.15	22.1.2018
Exhibit 6	Photograph of meeting with Dr Mohd Asri Zainul Abidin at the Mufti of Perlis' Office taken on 22.10.2015	22.1.2018
Exhibit 7	Screenshot of Facebook post by Dr Maza.com dated 7.10.2016	22.1.2018
Exhibit 8(a) to (m)	Screenshot of Facebook post and photographs posted by Jabatan Mufti Negeri Perlis dated 7.10.2016	22.1.2018
Exhibit 9	Sinar Harian Online Article "Mufti bimbang penularan Syiah di Perlis" dated 13.10.2016	22.1.2018
Exhibit 10	Letter from JAIP to Jabatan Pendidikan Negeri Perlis dated 21.9.2016	22.1.2018
Exhibit 11(a) to (d)	Facebook post by YB Ds Shahidan Kassim dated 20.9.2016	22.1.2018
Exhibit 12(a) to (d)	Photograph of Amri Che Mat's Car	22.1.2018
Exhibit 13	Berita Harian Online Article "Kehilangan aktivis kebajikan di Perlis tiada kaitan culik" dated 27.11.2016	22.1.2018

Exhibit 14	Screenshot of WhatsApp conversation between Annuar and Inspector Khor	24.1.2018
Exhibit 15, 15(1) to (12)	Facebook post by DrMaza.com and photographs posted dated 23.1.2018	24.1.2018
Exhibit 16	Free Malaysia Today (FMT) Online Article "Asri serang Amri, kata Syiah ancam 'keselamatan negara'" dated 23.1.2018	24.1.2018
Exhibit 17	FMT Video "Asri serang Amri, kata Syiah ancam 'keselamatan negara'"	24.1.2018
Exhibit 18	*Permohonan Semakan Rekod Keluar Masuk* Warga Malaysia (Amri Che Mat) dated 30.11.2016	24.1.2018
Exhibit 19	Pengesahan Rekod Pergerakan Keluar Masuk (Amri Che Mat) dated 14.7.2017	24.1.2018
Exhibit 20	Short Message Service (SMS) between Abdul Jamil and Amri Che Mat received at 11.11pm dated 24.11.2016	24.1.2018
Exhibit 21	SMS between Abdul Jamil dan Amri Che Mat sent at 11.34pm dated 24.11.2016	24.1.2018
Exhibit 22	Letter "Pemakluman Bagi Mengadakan Majlis Kesyukuran, Perkemahan Dan Sukan Sempena Wiladah Zainab Al-kubra 2014 (Hijrah 1435)" dated 3.3.2014	24.1.2018
Exhibit 22(T)	Transcription of handwritten notation of letter dated 3.3.2014	25.1.2018
Exhibit 23(a) to (j)	Photographs of Selama Police Station Lock-Up	24.1.2018
Exhibit 24(a) to (c)	Google Map image of location where Amri Che Mat was abducted allegedly	24.1.2018
Exhibit 25(a) to (d)	Perlis Hope's Organisation Profile	25.1.2018
Exhibit 25(e)	Notice of cancellation of Perlis Hope "Bantuan Baju Sekolah Rendah" Project	25.1.2018
Exhibit 26	Bankruptcy Search on Amri Che Mat dated 23.1.2018	25.1.2018
Exhibit 27(a) to (c)	Video at the location Amri Che Mat's car was found, taken on 4.11.17	25.1.2018

Exhibit 28	Polis Report No. PDG BESAR/003254/16 lodged dated 25.11.2016	25.1.2018
Exhibit 29	*Percakapan Dalam Pemeriksaan* Yousri bin Khalid dated 25.11.2016	25.1.2018
Exhibit 30(a) to (d)	Photocopy of Amri Che Mat's Passport	19.3.2018
Exhibit 31(a)	Letter from Azri, Lee Swee Seng & Co to Tetuan Tawfeek Badjenid & Partners dated 14.3.2018	19.3.2018
Exhibit 31(b)	Letter from Azri, Lee Swee Seng & Co to Jabatan Insolvensi Malaysia dated 14.3.2018	19.3.2018
Exhibit 32(a)&(b)	Letter from Tawfeek Badjenid & Partners to Tetuan Azri, Lee Swee Seng & Co dated 15.3.2018	19.3.2018
Exhibit 33	Letter from Jabatan Insolvensi Malaysia to Tetuan Azri, Lee Swee Seng & Co	19.3.2018
Exhibit 34	Photo of Amri Che Mat's adopted child (Hashimah)	19.3.2018
Exhibit 35	Photo of Amri Che Mat's adopted child (Hashimi)	19.3.2018
Exhibit 36	Photo of Amri Che Mat's adopted child (Nur Masarah)	19.3.2018
Exhibit 37	Photo of Amri Che Mat's adopted child (Hashimi)	19.3.2018
Exhibit 38	Floor plan of Amri Che Mat's house	19.3.2018
Exhibit 39	A copy of Bil Cukai Tanah Amri Che Mat	19.3.2018
Exhibit 40	WhatsApp dated 26.11.2016 between Sarjan Asri and Annuar	19.3.2018
Exhibit 41	WhatsApp dated 28.11.2016 between Sarjan Asri and Annuar	19.3.2018
Exhibit 42	Document "Payment pada 11.8.2016")	19.3.2018
Exhibit 43	Sketch of the scene Amri Che Mat was abducted	20.3.2018
Exhibit 44	Photograph of Tyre Shop	20.3.2018
Exhibit 45	Rough sketch of the scene Amri Che Mat was abducted	20.3.2018

Exhibit 46	Video of the scene Amri Che Mat was abducted in front of Restoran Mak Lang recorded on 20.3.2018	20.3.2018
Exhibit 47	Video of the scene Amri Che Mat was abducted in front of Restoran Mak Lang recorded on 20.3.2018	21.3.2018
Exhibit 48	*Percakapan Dalam Pemeriksaan* of Vee Yak a/l Ban Jong dated 16.10.2017	21.3.2018
Exhibit 49(a) to (c)	Photograph of Toyota Vios with registration number PFC1623	21.3.2018
Exhibit 50	Photograph of a Toyota Vios	21.3.2018
Exhibit 51	*Carlon Rasmi Pemilik Kenderaan* PFC1623 issued by Jabatan Pengangkutan Jalan (JPJ)	3.4.2018
Exhibit 52	Sinar Online Article "Wahabi tidak sesuai diamal di Malaysia" dated 1.3.2015	12.4.2018
Exhibit 53(a) to (c)	*Keputusan Carian Fatwa*	12.4.2018
Exhibit 54	Police Report No. KANGAR/003635/18 lodged by Norhayati binti Mohd Ariffin dated 15.5.2018	16.5.2018
Exhibit 55	*Percakapan Saksi 112* (Norhayati binti Mohd Ariffin) dated 15.5.2018	30.5.2018
Exhibit 56	WhatsApp Call Log call of Norhayati binti Mohd Ariffin	30.5.2018
Exhibit 57(a) to (c)	WhatsApp between Norhayati and Aizat	30.5.2018
Exhibit 58	WhatsApp conversation between Norhayati and Chon	30.5.2018
Exhibit 59	Call Log of Faizol calling Norhayati	30.5.2018
Exhibit 60(a) to (c)	Norhayati's Notebook	30.5.2018
Exhibit 61	Police Report No. KANGAR/003707/18 lodged by Mohamad Shamzaini bin Mohd Daud dated 18.5.2018	31.5.2018
Exhibit 62	*Surat Perjanjian* (*Pajakan Kedai* C32/1 Kampung Padang Behar)	31.5.2018
Exhibit 63(a) & (b)	WhatsApp Messages from Aizat's phone dated 13.5.2018	31.5.2018

Exhibit 63(c)	Call Log of Aizat	31.5.2018
Exhibit 64(a) to (c)	Call Log of Aizat	31.5.2018
Exhibit 65	Screenshot of Perlis Hope's Facebook page	7.6.2018
Exhibit 66	Screenshot of WhatsApp messages from Norhayati dated 13.5.2018	7.6.2018
Exhibit 67(a)	Call Log of Sheryll Stothard	7.6.2018
Exhibit 67(b)	WhatsApp Messages between Sheryll and Faisal dated 13.5.2018	7.6.2018
Exhibit 67(c)	Call Log of Sheryll Stothard	7.6.2018
Exhibit 67(d)	WhatsApp Messages between Sheryll and Norhayati dated 13.5.2018	7.6.2018
Exhibit 68(a) to (e)	Documents passed to Insp Hazwani on 15.5.2018, JSJ IPD Shah Alam	7.6.2018
Exhibit 69(a) & (b)	Call Log of Ris a/l Chooi (Pharid)	26.6.2018
Exhibit 70	Extract from Notes of Proceedings (NP9) from Pastor Raymond Koh's Case	3.7.2018
Exhibit 71(a) to (d)	Photographs of Toyota Vios Registration No. PFC1623	3.7.2018
Exhibit 72	List of written questions submitted to Insp. Khor Yi Shuen dated 2.4.2018	3.7.2018
Exhibit 73	The Rakyat Post Online Article "Bukit Aman dedah penyebaran Kristian menyamar Islam-Awaluddin Jadid" dated 11.11.2015	5.7.2018
Exhibit 74	Berita Harian Online Article "Militan terpesong diresapi ideologi salah" dated 5.1.2016	5.7.2018
Exhibit 75	Transcript of Youtube Video "Peringatan dan Amaran dari Dato' Ayob Khan Pichay" published on 19.8.2016	5.7.2018
Exhibit 76	The Star Online "Cops: Stamp Out radicalism" dated 21.8.2016	5.7.2018
Exhibit 77	Berita Malaysiakini "Syiah, mazhab, Jakim timbul pada pertemuan CEP – Mufti" dated 27.6.2018	5.7.2018
Exhibit 78	"Warta Kerajaan Negeri Perlis" dated 27.9.2012	5.7.2018

Exhibit 79	*Gambar Hadapan Rumah Puan Norhayati Di Kampung Padang Behor (1)*	6.7.2018
Exhibit 80(a) to (c)	*Gambar Rumah Puan Norhayati Di Kampung Padang Behar (2)*	6.7.2018
Exhibit 81	Malay Mail Online Article "Deputy Minister: 'National Fatwa Council' Incorrect Term" dated 31.3.2016	23.7.2018
Exhibit 82(a) to (c)	Facebook post by Facebook Rasmi Polis Diraja Malaysia	23.7.2018
Exhibit 83	*Minister for Home Affairs, Malaysia & Anor. v Jamaluddin bin Othman* [1989] 1 MLJ 418	23.7.2018
Exhibit 84	Police Report No. REDANG PANJANG /000164/14 dated 9.3.2014	23.7.2018
Exhibit 85	Sinar Online "Panggilan bongkar aktiviti Syiah" dated 10.3.2014	23.7.2018
Exhibit 86	Photograph of Pharid Audio	24.7.2018
Exhibit 87	Public Officers (Conduct And Discipline) Regulations 1993 PU(A) 395/1993	24.7.2018
Exhibit 88	Photograph of Banner With Pharif Auto's Telephone Number.	24.7.2018
Exhibit 89	Call Log of Sarjan Mohamad Shamzaini Mohd Daud	24.7.2018
Exhibit 90	Location Ping for Sarjan Mohamad Shamzaini Mohd Daud's phone	24.7.2018
Exhibit 91	Location Ping for Norhayati binti Mohd Ariffin's Phone	24.7.2018
Exhibit 92	Rekod Pergerakan Cuti Saiful Bahari bin Abd Aziz Tahun 2016	27.8.2018
Exhibit 93	WhatsApp message sent to Sarjan Mohamad Shamzaini Mohd Daud from Mohammad Faisol bin Abd Rahman	27.8.2018
Exhibit 94	Screenshot of PDRM Website Post "114 pengikut Syiah Ditahan"	28.8.2018
Exhibit 95	Kertas Butir-butir Penyiasatan, Dalam Aduan No: KANGAR RPT 8554/2016	31.10.2018

Exhibit 96	Video of Saiful Afdzan	31.10.2018
Exhibit 96(T)	Transcript of Video of Saiful Afdzan	31.10.2018
Exhibit 97	Statement of Saiful Afdzan bin Seinei recorded by SUHAKAM dated 17.5.2017	31.10.2018

Endnotes:

1. Press Statement No.14 Of 2017 (Memorandum from SUARA RAKYAT MALAYSIA (SUARAM))
https://www.suhakam.org.my/press-statement-no-14-of-2017-memorandum-from-suara-rakyat-malaysia-suaram/
2. Press Statement No.20 of 2017 (SUHAKAM Will Investigate the Cases Of Missing Persons/Disappearance Of Pastor Raymond Koh, Amri Che Mat, Pastor Joshua Hilmi and Ruth Hilmi, To Assist the Authorities with Their Ongoing Investigation)
https://www.suhakam.org.my/press-statement-no-20-of-2017-suhakam-will-investigate-the-cases-of-missing-persons-disappearance-of-pastor-raymond-koh-amri-che-mat-pastor-joshua-hilmi-and-ruth-hilmi-to-assist-the-authorities/
3. Press Statement No. 29 Of 2017 (SUHAKAM's Public inquiry on Disappearance Cases)
https://www.suhakam.org.my/press-statement-no-29-of-2017-suhakams-public-inquiry-on-disappearance-cases/
4. Press Statements No. 41 Of 2017 ("SUHAKAM's Public Inquiry Into the Incidents Of Disappearances Of Individuals")
https://www.suhakam.org.my/press-statennents-no-41-of-2017-suhakams-public-inquiry-into-the-incidents-of disappearances-of-individuals/
5. Although SUHAKAM is empowered to inquire into complaints on human rights infringements, it is subject to the provisions imposed by s. 12 of the Act which provides that SUHAKAM may not investigate complaints which are the subject matter of proceedings pending in a court of law or which have been finally decided by any court.
6. Refer to Schedule 1 and Schedule 2.
7. Page 3, Written Submissions in Reply dated 31 January 2019, Counsel on Behalf of the Family of Amri Che Mat.
8. Page 5, Written Submissions in Reply dated 31 January 2019, Counsel on Behalf of the Family of Amri Che Mat.
9. Page 25, Written Submissions dated 15 January 2019, Assisting Officers of SUHAKAM.

10. Page 20, Written Submissions dated 4 February 2019, Counsel of the Bar Council.
11. Page 20, Written Submissions, Officers Appearing for the Police.
12. Page 47, Written Submissions in Reply, Officers Appearing for the Police.
13. Page 20, Written Submissions, Officers Appearing for the Police.
14. Refer to paragraphs 161 to 167 below.
15. There are other various offences relevant to the discussion on enforced disappearance, among others, ss. 359 to 369 of Penal Code.
16. IACHR Series C No 70 (Official Citation) [2000] IACHR 7 (Other Reference) IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation) [2002] IACHR 1 (Other Reference) IHRL 1474 {IACHR 2002) (OUP reference).
17. Public Inquiry https://en.wikipedia.org/wiki/Public_inquiry
18. (2013, May 7), Report of the National Inquiry into the Land Rights of Indigenous Peoples (Rep.) Retrieved from https://drive.google.com/file/d/0136FQ7SONa3PRbUlnUGcxdzdEWUO/preview
19. See ss. 8(a), 8(b) and 8(c) of the Commissions of Enquiry Act 1950.
20. Refer to para. 35 above.
21. Appl. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Council of Europe: European Court of Human Rights, 18 September 2009.
22. IACHR Series C No 70 (Official Citation); [2000] IACHR 7 (Other Reference); IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation); [2002] IACHR 1 (Other Reference); IHRL 1474 (IACHR 2002) (OUP reference).
23. IACHR Series C no 10 (Official Citation); IHRL 1391 (IACHR 1990) (OUP reference).
24. See also *Velasquez-Rodrigues v. Honduras* Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrtHR), 29 July 1988.
25. Appl. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Council of Europe: European Court of Human Rights, 18 September 2009.
26. Communication No. R.7/30, 29 March 1982.
27. See also Satoh Saker v Algeria (HRC, March 2006).
28. IACHR Series C No 70 (Official Citation) (2000) IACHR 7 (Other Reference) IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation) 120021 IACHR 1 (Other Reference) IHRL 1474 (IACHR 2002) (OUP reference).
29. Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrtHR), 29 July 1988.

30. See also *Sunny Ang v. Public Prosecutor* [1963] 2 MLJ 195, where the appellant was convicted of murder even though the body of the deceased was not found and the prosecution relied on circumstantial evidence.
31. Page 8, Written Submissions dated 18 January 2019, Counsel on Behalf of the Family of Amri Che Mat.
32. Please refer to paras. 99 to 102 on Shia gathering in Perak on 8 March 2014.
33. Refer to paras. 87 to 90 on Perlis Hope.
34. Page 119, Notes of Proceedings dated 26 June 2018 (NP15).
35. Page 28, Notes of Proceedings dated 23 July 2018 (NP20).
36. Refer to paras. 109 to 115 on the meeting between the Police and the religious authorities on 7 October 2016.
37. Exhibit 11(a) to (d).
38. Exhibit 10.
39. Zahid Hamidi: Home Ministry To Propose Islam Is Defined in Constitution/ Malay Mail https://www.malaymail.com/news/malaysia/2013/12/06/zahid-hamidi-home-ministry-to-propose-islam-is-defined-in-constitution/576747.
40. A group of Muslims under the *Sunni* faith.
41. From photographs adduced, 10 people were present: Dato' Awaludin and ACP Hanafi Mohd Sani from E2 in Bukit Aman; 3 officers from E2 in Perlis: ASP Razman Ramli, Inspector Fadli, and Sergeant Wan Nasirudin; Officers from the Perlis religious authorities: Mufti of Perlis and the JAIP Director Dr Hazman.
42. Page 59, Notes of Proceedings dated 3 July 2018 (NP17).
43. Page 77, Notes of Proceedings dated 3 July 2018 (N P17).
44. Page 32, Notes of Proceedings dated 12 April 2018 (NP9).
45. As stated by Saiful Afdzan in the video recorded by an officer from SUHAKAM, marked as exh. 96.
46. See the case of *Chun Chwen Kong* and *Sunny Ang*, para. 73 above.
47. Exhibit 54 and 53.
48. Refer to p. 45 of Notes of Proceedings dated 27 August 2018.
49. Refer to p. 36 of Notes of Proceedings dated 27 August 2018.
50. Refer to para. 48 above.
51. Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police 2005.
52. Recommendation in Report of the Royal Commission to Enhance the Management and Operation of the Royal Malaysian Police (2005).
53. Articles 3, 12, 19 and 22 of the ICPPED.

A 54. Articles 6 and 10 of the ICPPED.
55. Article 7 of the ICPPED.
56. Articles 18 and 24 of the ICPPED.
57. Article 23 of the ICPPED.

B

C

D

E

F

G

H

I